

MEMORANDUM

Agenda Item No. 11(A)(10)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 4, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution authorizing the County to participate in the proposed Class Action Settlements with Tyco Fire Products LP and BASF corporation in the public water systems' portion of the multi-district litigation matter, In Re: Aqueous Film-Forming Foams Product Liability Litigation, MDL 2:18-MN-2873-RMG, Case No. 2:23-cv-03230-RMG, relating to PFAS contamination of drinking water; authorizing the County Mayor, after consultation with the County Attorney's Office, to complete all documentation and execute all releases and agreements necessary to participate in the settlements with Tyco and BASF in the water providers' portion of the MDL; and authorizing the County Attorney and the County's outside counsel to continue to pursue litigation related to PFAS on behalf of the County

Resolution No. R-775-24

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Oliver G. Gilbert, III.



Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001

Memorandum



Date: September 4, 2024

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: 
Gen. Bonzon-Keenan
County Attorney

Subject: Resolution Authorizing Miami-Dade County to Participate in the proposed Class Action Settlements with Defendant Tyco Fire Products LP and Defendant BASF Corporation in the Public Water Systems' portion of the In Re: Aqueous Film-Forming Foams Product Liability Litigation related to Per- and Polyfluoroalkyl Substances ("PFAS") Contamination of Drinking Water and to Take Certain Other Related Actions

Recommendation

The County Attorney and the County's Outside Counsel¹ both recommend that the Board approve the attached resolution, which:

- (1) authorizes the County to participate in the proposed Class Action Settlements with: (a) Tyco Fire Products LP and affiliated entities ("Tyco") and (b) BASF Corporation and affiliated entities ("BASF"), respectively, in the Public Water Systems' portion of the Multi-District Litigation ("MDL") matter, In Re: Aqueous Film-Forming Foams Product Liability Litigation, MDL 2:18-mn-2873-RMG, Case No. 2:23-cv-03230-RMG,² relating to PFAS contamination of drinking water;
- (2) authorizes the County Mayor or County Mayor's designee to, after consultation with the County Attorney's Office:
 - a. complete all documentation required to participate in the Tyco and BASF Settlements, such as Claims Forms; and
 - b. execute all releases and agreements necessary to finalize settlement of the Public Water Systems' portion of the MDL with Tyco and BASF; and

¹ The County's outside counsel, chosen by this Board pursuant to Resolution No. R-688-20, consists of: Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A.; Taft Stettinius & Hollister LLP; Douglas & London, P.C.; Kelley Drye & Warren LLP; SL Environmental Law Group PC; and Kennedy & Madonna, LLP (collectively, "County's Outside Counsel" or the "Levin Team").

² The County's individual case against various manufacturers and distributors of products containing PFAS, including Tyco and BASF, was initially filed as part of the MDL in the United States District Court for the District of South Carolina, Charleston Division, before Judge Richard Mark Gergel as Case No. 2:20-cv-4194-RMG and was subsequently merged with the other related cases into the overall MDL action, In Re: Aqueous Film-Forming Foams Product Liability Litigation, MDL 2:18-mn-2873-RMG, Case No. 2:23-cv-03230-RMG.

- (3) authorizes the County Attorney and the County's Outside Counsel to:
 - a. continue litigating the County's claims against the defendants remaining in the Public Water Systems' portion of the MDL matter, In Re: Aqueous Film-Forming Foams Product Liability Litigation, MDL 2:18-mn-2873-RMG, Case No. 2:23-cv-03230-RMG; and
 - b. continue pursuing litigation against any and all defendants, including Tyco and BASF, that may be liable for damages to the County that extend beyond the County's drinking water supply.

Similar to the analysis previously conducted when the County Attorney and the County's Outside Counsel recommended that the County participate in the class action settlements with 3M and the DuPont Defendants,³ the County Attorney and the County's Outside Counsel⁴ weighed the pros and cons of accepting the settlements with Defendants Tyco and BASF versus continuing to litigate the claims for damage to the County's drinking water supply against these defendants. Although the cases against both defendants are likely to be successful, at least in part, due to the County's ability to link some of its water supply damages to the products manufactured by these two defendants or their affiliates, and although prevailing in the litigation in the future could lead to the recovery of a larger sum for the County, the downsides and risks associated with waiting to recover a judgment weighed heavily in favor of participating in the settlements now. Specifically:

- (1) trial and/or resolution of the County's case may be significantly delayed because the Judge handling the MDL has indicated that the Court's resources will likely be focused next on the cases with plaintiffs other than water providers;
- (2) some or all of the Tyco and BASF entities could declare bankruptcy or run out of funds to pay a judgment before the County's case has been tried and/or resolved;
- (3) if the County does not settle the case at this time, it will likely be proceeding in its litigation individually, and the attorneys' fees and litigation costs to try this matter could be excessive and will be borne solely by the County as opposed to shared costs through the settlements now; and

³ On November 7, 2023, the Board approved Resolution No. R-1015-23, which authorized the County to participate in the Class Action Settlements with Defendant 3M and Defendants The Chemours Company; The Chemours Company FC, LLC; DuPont de Nemours, Inc.; Corteva, Inc.; and E.I. DuPont de Nemours and Company n/k/a EIDP, Inc. (collectively, the "DuPont Defendants").

⁴ The County's Outside Counsel has provided a letter setting forth its recommendation as to both settlements, which is attached hereto as Exhibit 1.

- (4) because, unlike 3M and DuPont, who manufactured PFAS contained in many different products (including AFFF), the only product that Tyco and BASF made containing PFAS was AFFF, and because they were among a dozen or so different companies that made it, the County could have difficulty linking all or part of its PFAS contamination to the AFFF made by Tyco or BASF, as opposed to the AFFF made by others, or non-AFFF products.

The settlement agreements with Defendant Tyco and Defendant BASF will not prohibit the County from continuing to litigate its case for damages to the drinking water supply against the other defendants that have been sued in the County's current case nor from continuing to seek damages from either Defendants Tyco or BASF for the costs needed to remediate property as a result of PFAS contamination at County properties, and/or to address PFAS in the County's wastewater treatment processes.

Background

1. The Federal and State Regulatory Landscape Regarding PFAS

PFAS are a group of man-made chemicals that were used for decades in industrial and household products, such as stain and water-repellant apparel and fabrics, food packaging, cleaning products, non-stick cookware, and Aqueous Film Forming Foam ("AFFF") used to extinguish fires. PFAS accumulate over time, do not break down easily, remain in and move through the environment for decades, and have been linked to certain health impacts, such as cancer and birth defects.

Historically, the Environmental Protection Agency ("EPA") recommended a Health Advisory Level ("HAL") of no more than 70 parts per trillion ("ppt") of PFAS in drinking water as a guidance figure and did not set a Maximum Containment Level ("MCL") or enact any regulations regarding these substances. However, in April 2024, the EPA issued a final rule that sets an MCL of 4 ppt for two forms of PFAS—PFOA and PFOS—in drinking water; sets a "hazard limit index" for several other forms of PFAS; and requires water providers to bring their systems into compliance with the new MCL within a set number of years (with some limited extensions that may be available for particular conditions). In addition, under the new rule, water providers have to meet various reporting and monitoring requirements on a going forward basis. In the past, the Florida Department of Environmental Protection ("FDEP") indicated that it would set the State's MCL at the same level required by the EPA; however, to date, FDEP has not yet set a State MCL for PFAS.

2. PFAS in the County's Water Supply

The County's water system, operated by the Miami-Dade Water and Sewer Department ("WASD"), serves over 2.4 million customers, covers a 396 square mile service area, and produces over 330 million gallons of drinking water per day ("mgd") for the residents of the County. The County's system includes 111 wells, located geographically throughout the County, from which the County's drinking water supply is drawn. The water from the

wellfields is treated at the County's three regional and five smaller water treatment plants before being distributed to the County's customers and its 15 wholesale municipal customers.

The County has been testing and monitoring its wells for PFAS on a quarterly basis since 2019. From the start of the testing, PFAS has been detected in the County's drinking water supply. WASD has been utilizing techniques to manage PFAS exposure. Since 2020, WASD has been working with consultants to analyze the extent of the contamination in the water supply and to consider methods for treating PFAS in the County's system. WASD is still in the process of making a final decision as to the best technology and methods to utilize to treat the County's water supply; however, the current estimate provided by WASD and its consultants for addressing the PFAS contamination problem ranges from the high hundreds of millions of dollars to \$3 billion.

3. Prior Board Action Related to PFAS

On February 4, 2020, this Board adopted Resolution No. R-146-20 in response to the discovery of PFAS within Miami-Dade County. Resolution No. R-146-20 directed the County Attorney's Office to assess whether the County should engage in litigation to recover costs and other damages associated with the existence of PFAS within the County. In doing so, the Board requested that the County Attorney evaluate the viability of legal claims against PFAS manufacturers and other culpable parties and recommend whether such claims may be brought by the County. The Board further directed the County Attorney, if advisable, to identify up to three law firms that could serve as outside counsel under the direction of the County Attorney's Office for PFAS litigation. The Board directed that such representation be on a contingency fee basis and at no cost to the County unless the County obtains a monetary recovery. Any payments to the outside counsel will thus come from the proceeds of the litigation itself.

On July 8, 2020, consistent with the recommendation of the County Attorney's Office, the Board adopted Resolution No. R-688-20 through which the Board selected the Levin Team to serve as the County's Outside Counsel for purposes of representing the County in PFAS litigation at the direction of the County Attorney; authorized the County Mayor or County Mayor's designee to execute a retainer agreement with the Levin Team; and directed the County Attorney and the Levin Team to pursue litigation to recover costs and other damages associated with the discovery of PFAS within the County.

The retainer agreement with the Levin Team was executed by the County Mayor on July 23, 2020. It specifies that the Levin Team would prosecute the County's case on a contingency fee basis and would not receive any fees or costs if the County did not recover any damages. It also laid out a fee percentage and fee/cost cap schedule based on the stage of litigation at which the case resolved, which ranges from 9 percent to 20 percent, inclusive of both attorneys' fees and costs.

4. The Litigation

On December 3, 2020, the County filed its Complaint and Demand for Jury Trial in the MDL in order to: recover the costs necessary to protect the public health, safety, welfare, and the

environment; to comply with applicable soil and groundwater cleanup target levels; and to prevent the contamination of drinking water resources by restoring the groundwater quality and eliminating contamination caused by PFAS in AFFF. The suit brought against various manufacturers and distributors of AFFF sought abatement of the contamination and damages for: strict product liability based on design defect and failure to warn; negligence; continuing trespass; and public nuisance.

In January 2021, the County completed and filed a Fact Information Sheet in the MDL that included basic information about the size of the County's water utility; the extent of the property and drinking water impacted by the Defendants' products containing PFAS; testing and monitoring data for the wells and sources of drinking water throughout the County; and potential sources of the PFAS contamination to the County's drinking water and property.

In 2021, during the bellwether selection process for the Public Water Systems' portion of the MDL, the County's case was considered but, ultimately, was not selected to be one of the first cases tried. Instead, the Bellwether Committee, comprised of attorneys representing both the Plaintiffs and Defendants, selected 10 other Public Water System cases to proceed as bellwethers, with the City of Stuart, Florida's case set as the first Public Water System case to proceed to trial.⁵ After extensive discovery and briefing on a variety of issues, the City of Stuart case was set to begin trial in June 2023; however, several weeks before the start of trial, the class representatives for the overall MDL reached tentative settlements as to the Public Water Systems' portion of the MDL with both 3M and the DuPont Defendants. Each member of the class was given an opportunity to opt out of either or both settlements.

On November 7, 2023, the Board approved Resolution No. R-1015-23, which authorized the County to participate in the proposed settlements reached with both Defendant 3M and the DuPont Defendants. The settlement agreements with both defendants were approved by the MDL Court at fairness hearings in February 2024 and December 2023, respectively, and the County, with the assistance of the County's Outside Counsel, has already submitted its claims to the Claims Administrator for both settlements.

On June 7, 2024, the County filed its First Amended Complaint in the MDL, which added additional defendants to the case and introduced new facts and causes of action related to damages the County has suffered from PFAS beyond its impact on the County's drinking water supply, including assertion of claims based on strict product liability, continuing trespass and negligence for contamination of non-drinking water resources.

⁵ Although the County has continued to gather data regarding the extent of the PFAS problem in the County and has been working on potential treatment and remediation methods for the drinking water supply, because it was not selected as a bellwether case, the County's case has not progressed meaningfully beyond the filing of the Complaint, an Amended Complaint and Fact Information Sheet.

5. The Proposed Settlements

a. Tyco

Tyco has agreed to pay \$750,000,000.00 (the “Tyco Settlement Fund”), subject to the MDL Court’s final approval of the proposed settlement agreement⁶ and other conditions set forth in the proposed settlement agreement. Under the agreement, Tyco is expected make two payments into the Tyco Settlement Fund: \$250,000,000 by May 29, 2024, and the remaining \$500,000,000.00 by October 15, 2024. The costs and expenses of the Claims Administrator, the Notice Administrator, the Special Master, the Escrow Agent and the Opt Out Administrator will be deducted from the Tyco Settlement Fund as will approximately nine-percent (9%) for the Common Benefit Holdback Assessment, which fund pays certain common attorneys’ fees and costs. Additionally, five-percent (5%) of the Tyco Settlement Fund will be set aside for a Special Needs Fund⁷ and seven-percent (7%) of the Tyco Settlement Fund will be set aside for the Supplemental Fund.⁸

For purposes of the Tyco Settlement, the County is considered a Qualifying Class Member⁹ because it is an Active Public Water System that had one or more Impacted Water Sources as of May 15, 2024. In addition, because the County filed its lawsuit against Tyco in 2020, and because the levels of PFAS in the County’s drinking water supply wells are generally higher than the federal MCL, the County will be entitled to an additional 25 percent Tyco Litigation Bump and a 4X Tyco Regulatory Bump when calculating its potential recovery. The ultimate amount received, however, will depend on the number of Public Water Systems that participate in the Settlement and the number and characteristics of claims they submit for their impacted water. As a result, the sum the County will receive in the Settlement if it chooses to participate cannot be known in advance, though it can be estimated based on publicly available information about reported PFAS detections in water systems across the country and assumptions about the size of the sources in those systems.

The County has compiled the data required to determine its approximate recovery from the Tyco Settlement Fund and, with the assistance of the Levin Team, has developed a good-faith estimate of the County’s recovery in the amount of at least \$10 million if it chooses to

⁶ The Court will decide whether to grant final approval to the Tyco Settlement at a Final Fairness Hearing on November 1, 2024.

⁷ Qualifying Class Members who have incurred expenses attempting to limit PFAS impacts to their customers or to comply with regulatory orders to address PFAS may be entitled to a share of the Special Needs Fund.

⁸ The Supplemental Fund is preserved for those sources in public water systems that do not have PFAS testing results at the time of the settlement that exceed their State and/or the Federal MCL.

⁹ Because the volume of impacted drinking water and the degree of the impact are the main factors in calculating the cost of treating PFAS, the Tyco Settlement Fund will be allocated to Qualifying Class Members through a process that uses formulas to calculate each member’s allocation. In addition, certain Qualifying Class Members may be entitled to additional bumps in their recovery based on the date of the initiation of their case against Tyco (the “Tyco Litigation Bump”) as well as the amount their impacted water exceeds federal and state Maximum Contaminant Levels (“MCLs”) (the “Tyco Regulatory Bump”).

participate in the Tyco Settlement. That amount includes the Tyco Regulatory Bump enhancement, but not the Tyco Litigation Bump enhancement, which will likely increase the total recovery by around 25 percent. In addition, the good-faith estimate does not include potential recovery through the Special Needs Fund. Finally, the good-faith estimate does not deduct the amounts owed to the Levin Team, which, depending on the ultimate gross recovery by the County, will be 15-18 percent based on the fee/cost schedule in the retainer agreement. Subject to potential delays in final approval of the settlement, the County's allocation of the Tyco Settlement Fund is estimated to be paid in mid-2025, after the Fund has been established and the Claims Forms have been submitted and administered.

In exchange for its allocation from the Tyco Settlement Fund, the County will be required to: (1) dismiss its claims against Tyco related to PFAS in its drinking water with prejudice, and (2) release Tyco from any liability to the County for claims related to PFAS in the County's drinking water, including but not limited to, all costs and rate increases needed to remediate the water supply and any actions brought against the County related to PFAS in the drinking water. Therefore, in the future, if the County is sued by a third party for anything related to PFAS in the County's drinking water, the County will not be able to look to Tyco for indemnification or assert that Tyco is liable for such damages. In addition, with regard to the County's remaining claims against Tyco for: (1) damage to the County's properties that require remediation and removal of PFAS contamination, and (2) damage to the County's wastewater treatment processes, the County will be limited strictly to pursuing claims against Tyco for costs associated with cleanup of the properties and remediating or removing PFAS from the wastewater. The terms of the Tyco Settlement Agreement are non-negotiable.

If the County does not wish to participate in the Tyco Settlement, it must opt out by submitting a Request for Exclusion by no later than September 23, 2024.

b. BASF

BASF has agreed to pay \$312,500,000 (the "BASF Settlement Fund"), subject to the MDL Court's approval of the proposed settlement agreement¹⁰ and other conditions set forth in the proposed settlement agreement. In addition, BASF has agreed to make a separate payment of \$4,000,000 to cover the costs and expenses of the Notice Administrator, Claims Administrator, Special Master, Escrow Agent, and Opt Out Administrator. BASF will pay the \$4,000,000 for the notice and administrative expenses into the BASF Settlement Fund by no later than July 15, 2024 and will pay the \$312,500,000 into the BASF Settlement Fund by no later than March 1, 2025. After approximately nine-percent (9%) has been deducted from the BASF Settlement Fund for the Common Benefit Holdback Assessment, which fund pays certain common attorneys' fees and costs; five-percent (5%) has been set aside for a Special Needs Fund;¹¹ and

¹⁰ The MDL Court has not yet set a date for the final fairness hearing for the BASF settlement.

¹¹ Qualifying Class Members who have incurred expenses attempting to limit PFAS impacts to their customers or to comply with regulatory orders to address PFAS may be entitled to a share of the Special Needs Fund.

seven-percent (7%) has been set aside for the Supplemental Fund,¹² the remainder of the BASF Settlement Fund will be available for distribution among the Qualifying Class Members.

For purposes of the settlement with BASF, the County is considered a Qualifying Class Member¹³ because it is an Active Public Water System that had one or more Impacted Water Sources as of May 15, 2024. In addition, because the County filed its lawsuit against BASF in 2020, and because the levels of PFAS in the County's drinking water supply relative to the projected state and federal MCL are high, the County will be entitled to an additional 25 percent BASF Litigation Bump and a 4X BASF Regulatory Bump when calculating its potential recovery. The ultimate amount received, however, will be based on the number of Public Water Systems that participate in the Settlement and the number and characteristics of claims they submit for their impacted water. As a result, the sum the County will receive in the Settlement if it chooses to participate cannot be known in advance, though it can be estimated based on publicly available information about reported PFAS detections in water systems across the country and assumptions about the size of the sources in those systems.

The County has compiled the data required to determine its approximate recovery from the BASF Settlement Fund and, with the assistance of the Levin Team, has developed a good-faith estimate of the County's likely recovery in the amount of at least \$4 million if it chooses to participate in the BASF Settlement. That amount includes the BASF Regulatory Bump enhancement, but not the BASF Litigation Bump enhancement, which will likely increase the total recovery by around 25 percent. It also does not include any potential recovery from the Special Needs Fund. The good-faith estimate also does not deduct the amounts owed to the Levin Team, which, depending on the ultimate gross recovery by the County, will be 15-18 percent based on the fee/cost schedule in the retainer agreement. Subject to potential delays in final approval of the settlement, the County's allocation of the BASF Settlement Fund is estimated to be paid in late 2025, after the Fund has been established and the Claims Forms have been submitted and administered.

In exchange for its allocation from the BASF Settlement Fund, the County will be required to: (1) dismiss its claims against BASF related to PFAS in its drinking water with prejudice, and (2) release BASF from any liability to the County for claims related to PFAS in the County's drinking water, including but not limited to, all costs and rate increases needed to remediate the water supply and any actions brought against the County related to PFAS in the drinking water. Therefore, in the future, if the County is sued by a third party for anything related to PFAS in the County's drinking water, the County will not be able to look to BASF for indemnification or assert that BASF is liable for such damages. In addition, with regard to the County's remaining claims against BASF for: (1) damage to the County's properties that

¹² The Supplemental Fund is preserved for those sources in public water systems that do not have PFAS testing results at the time of the settlement that exceed their State and/or the Federal MCL.

¹³ As in the Tyco Settlement, the amount to be received by each Qualifying Class Member will be calculated using formulas that factor in the volume of impacted drinking water and the degree of the impact. In addition, certain Qualifying Class Members may be entitled to additional bumps in their recovery based on the date of the initiation of their case against BASF (the "BASF Litigation Bump") as well as the amount their impacted water exceeds federal and state Maximum Contaminant Levels ("MCLs") (the "BASF Regulatory Bump").

require remediation and removal of PFAS contamination, and (2) damage to the County's wastewater treatment processes, the County will be limited strictly to pursuing claims against BASF for costs associated with cleanup of the properties and remediating or removing PFAS from the wastewater. The terms of the BASF Settlement Agreement are non-negotiable.

If the County does not wish to participate in the BASF Settlement, it must opt out by submitting a Request for Exclusion by no later than October 15, 2024.



**ENVIRONMENTAL
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August 20, 2024

Geri Bonzon-Keenan, Esq.
County Attorney
Miami-Dade County
111 NW 1st Street, Suite 2810
Miami, Florida 33128

Re: *Aqueous Film-Forming Foam (AFFF)*, MDL No. 2873
Informed Consent Letter re Tyco and BASF PWS Settlements

Dear Geri:

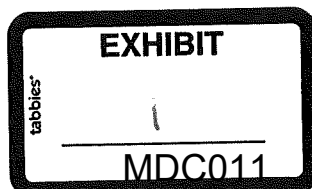
We are pleased to inform you that, pursuant to the Settlement Agreements reached with Tyco Fire Products LP and affiliated entities, including Chemguard, Inc. and Johnson Controls, Inc. (collectively, "Tyco"), and BASF Corporation and related entities, including Ciba-Geigy Corporation ("BASF"), and preliminarily approved by the governing federal court, the U.S. District Court for the District of South Carolina, it appears that you are eligible to participate in these settlements and seek awards through the Claims Form submission process.

You are receiving this communication so that you are fully informed as to the essential terms of the Settlements, the basic eligibility requirements for participation, and the Allocation Procedures, which provide the assessment and compensation methodology for determining awards for eligible claimants.

The decision about whether to participate in the Settlements is yours but we strongly recommend that you do so. We believe that the Settlements, as detailed further below, will provide you a fair and reasonable settlement value for your PFAS-related claims against the settling defendants given (a) the value secured to resolve the claims at issue; (b) the risks, uncertainties and expense of litigation; (c) the potential of future insolvency on behalf of the settling defendants; and (d) current regulatory mandates that require action within the next few years to treat PFAS in drinking water. Participating in the Settlements will provide significant protections for your claim that will not exist if you choose to opt out. In our opinion, this Settlement Program is the best opportunity to receive fair and reasonable compensation for your claims in the foreseeable future. Based upon Class Counsel's knowledge and experience gained through years of involvement in not just this MDL but in PFAS-related litigation, we believe that settling now and receiving payment for your claims is clearly in your best interest.

If you decline to enter the Settlement Program, you will need to affirmatively opt-out. If you opt-out, your claims against Tyco and BASF will continue in the court system. This will involve substantial additional delay and expense to you, and you also run the risk of ultimately receiving

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nothing for your claims. Indeed, Judge Gergel, the judge overseeing these cases and these settlements has estimated that litigants who elect to opt out might add additional five plus years before their cases can be heard.

As your counsel, we believe that these Settlements are fair and reasonable and represent the best chance to recover meaningful compensation for your PFAS-related drinking water claims. We strongly encourage you to participate, and we remain available to answer any questions and to help you through the Claims Form submission process. Attached as Exhibit A to this Letter is some additional information about the PFAS Settlement process with Tyco and BASF that may be helpful in making your final decision as to whether to remain in the Settlement Class or opt out at this time.

Thank you for the opportunity to represent you in this matter. We are extremely pleased to announce this favorable resolution and hope that we can be of assistance to you as the process unfolds.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. Sansone', with a long horizontal flourish extending to the right.

Kenneth A. Sansone, Esq.
SL Environmental Law Group, P.C.

EXHIBIT A

I. How was this Agreement reached?

The Settlement Agreement is the result of heavily contested litigation and preliminary negotiations that date back two years, followed by several more months of arms-lengths' negotiations aided by a Court-appointed mediator, the Honorable Layn Phillips (retired).

A. History of the MDL

Aqueous film-forming foam, or "AFFF," refers to a class of firefighting agents containing PFAS that have historically been used to control and extinguish Class B fuel fires. The AFFF MDL was established on December 7, 2018, as result of the consolidation for pretrial purposes of all cases that claimed damages due to AFFF. These cases have all been transferred and are currently pending before the Honorable Richard Gergel in the United States District of South Carolina (the "MDL Court" or the "Court"). The AFFF MDL currently comprises approximately 15,000 cases, and a massive amount of discovery has already been conducted that has resulted in the production of nearly 40 million pages of documents by defendants and third parties, and the completion of more than 160 depositions. Additionally, a bellwether process for the water provider cases was developed with the Court's guidance and oversight.

The AFFF MDL generally consists of products liability claims alleging damages as a result of the following: (1) contamination of Drinking Water supplies with PFAS primarily through AFFF (which is estimated to have caused the majority of the PFAS contamination in Drinking Water); (2) claims by property owners for clean-up and remediation costs to remove PFAS from their ground/soil; (3) claims by personal injury plaintiffs; (4) claims for medical monitoring; and (5) claims for damages brought by state Attorneys General to recover for their respective states' natural resource damages.

This Settlement Agreements would release only those Claims brought by Public Water Systems ("PWS") for the contamination of their respective Drinking Water. Lawsuits alleging similar Drinking Water Claims against other defendants are continuing and are not impacted by the present Settlement. In addition, many Public Water Systems may have other PFAS- or AFFF-related claims alleging damages unrelated to Drinking Water. Litigation concerning those claims is likewise ongoing and they are not released by these Settlements.

II. Preliminary Approval of the Proposed Rule 23(b)(3) Class Action Settlement

The Parties to the Settlement Agreements have jointly requested that the Court certify the Settlement Class defined below under Rule 23(b)(3) on the basis that common questions of law and fact predominate over individual issues with respect to the potential Class Members' claims. The Settlements have been granted Preliminary Approval by the Court, with the Settlement Classes defined as follows:

Tyco: Every Active Public Water System in the United States of America that has one or more Impacted Water Sources as of May 15, 2024, with "Impacted Water Source" defined as a Water

Source that has a Qualifying Test Result showing a Measurable Concentration of PFAS, and excluding most non-community public water systems and state or federally owned public water systems;

BASF: Every Active Public Water System in the United States of America that has one or more Impacted Water Sources as of May 15, 2024, with “Impacted Water Source” defined as a Water Source that has a Qualifying Test Result showing a Measurable Concentration of PFAS, and excluding most non-community public water systems and state or federally owned public water systems.

It is very important that you carefully review and understand all provisions of the Settlement Agreements, including all defined terms and their interplay.¹

III. Claims Process

To receive an award under the Settlements, a PWS meeting the Class definitions must timely submit a Claims Form. The Claims Administrator will review the information provided in submitted Claims Forms to confirm eligibility for participation in the Settlements.

Baseline Testing

In order to be eligible for an allocated award from the Settlements, a PWS must perform Baseline Testing. Public Water Systems can—and often many do—have multiple groundwater wells and/or surface water intakes (collectively referred to as “Water Sources”). For a Water Source to be eligible for an award under the Settlements, a Class Member must perform Baseline Testing on that Water Source for PFAS and submit Qualifying Test Results to the Claims Administrator by the deadline specified below.

A Water Source that has already been tested and was found to have a Measurable Concentration of PFAS does not need to be retested for purposes of Baseline Testing. Likewise, a Water Source tested **on or after January 1, 2019** that shows no Measurable Concentration of PFAS also does not need to be retested to satisfy the Baseline Testing requirement. Any Water Source tested **prior to January 1, 2019** that did not show a Measurable Concentration of PFAS must be retested in order to be eligible for any future payment.

Baseline Testing may be performed by any laboratory accredited or certified by a state government or federal regulatory agency for PFAS analysis that uses any state- or federal agency-approved or -validated PFAS analytical method that is consistent with (or stricter than) the requirements of UCMR 5. Class Counsel has arranged for discounted testing with the Eurofins laboratory to assist Class Members in meeting the Baseline Testing requirements for this Settlement. Eurofins is also prepared to forward the test results to the Claims Administrator, though there is no requirement that Class Members use Eurofins for any Baseline Testing they need.

¹ Because of the slight variation in defined terms across the respective Settlement Agreements, attempts have been made throughout this document to use shared terms. As doing so was not always possible, no weight should be given to any such slight variation.

Eurofins: (916) 374-4499

<https://www.eurofinsus.com/environment-testing/pfas-testing/pfas-water-provider-settlement/>

Claims Form Submission Process

In order to establish membership in the Settlement Class and eligibility for compensation from the Settlements, a PWS must complete the relevant Claims Form(s). The term “Claims Form” may refer to any of separate forms, each associated with different funds available to claimants through the Settlement process.

The Claims Forms are available online at the Settlement website (www.PFASWaterSettlement.com) and can be submitted to the Claims Administrator electronically or on paper. Class members are encouraged to begin providing information required by the Claims Forms. Class members must submit Claims Forms and provide Baseline Testing results for each of their Impacted Water Sources in order to be eligible for compensation under the Settlements.

The Claims Administrator will review each Claims Form, verify the completeness of the data it contains, and follow up as appropriate, including notifying Settlement Class Members of the need to cure deficiencies in their submission(s), if any. Based on the data in the Claims Forms, the Claims Administrator will then confirm Settlement Class membership and determine the amount each Settlement Class member is owed from each of the funds (discussed below) from which the Settlement Class member seeks compensation. Despite slight variation in naming conventions across the respective Settlements, the funds available generally fall into the following categories:

1. The **Action Funds** will be for Settlement Class members who have completed Baseline Testing and wish to receive compensation based on Qualifying Test Results showing PFAS detections.
2. The **Supplemental Funds** will be for Settlement Class members whose Baseline Test Result(s) did not initially exceed a state or federal MCL when it submitted its Claims Form, but later does, and for those Water Sources that did not have a Measurable Concentration of PFAS when Claims Forms were submitted, but later detect a Measurable Concentration of PFAS.
3. The **Special Needs Funds** will be for Settlement Class members that have expended monetary resources on extraordinary efforts to address PFAS detections. Examples of this will include: taking wells offline, reducing flow rates, drilling new wells, pulling water from other sources, and/or purchasing supplemental water.

Allocation Scoring and Adjustments

The Allocation Procedures will govern the evaluation and scoring of each Impacted Water Source and the individual Settlement award. The Claims Administrator will input the flow rates and PFAS concentrations into the calculation set forth in the Allocation Procedures to determine the Base Score for each Impacted Water Source.

Once the Base Score is determined, additional adjustments may also be applied. Qualifying Class Members may be eligible for none, one, or multiple enhancement adjustments. A few examples of these enhancements include:

- The **Litigation Bump** (for those Class Members who filed suit before the Settlement Dates against Settling Defendants, with different degrees of bump depending on the date of filing);
- The **Bellwether Bump** (for those Class Members who served as Bellwether plaintiffs); and
- The **Regulatory Bump** (for those Class Members whose Impacted Water Source PFAS contamination exceed certain state or proposed federal Maximum Contaminant Levels (“MCLs”), as described in detail in the Allocation Procedures).

Claims Period

Class members may submit Claims Forms *now*, though the Claims Forms will not be scored until all Claims Forms are submitted by the deadline set after the Effective Dates, which is the date that the Court’s entry of its judgment approving each settlement becomes final and non-appealable.

IV. Good-Faith Estimates

Using the data from the Estimated Allocation Range Tables provided by the Plaintiffs’ Executive Committee, we have calculated a rough estimated allocation amount for each of your Impacted Water Sources. The Tables provide estimated ranges of allocated amounts based on the two factors most relevant to the calculation of the cost of PFAS treatment – flow rates and PFAS concentration levels – which are reflected in the Allocation Procedures as Adjusted Flow Rates and PFAS Scores.

The Estimated Allocation Range Tables were derived from PFAS concentration data that was publicly available and gathered from public agencies, as well as on reasonable assumptions as to flow rates based on population (since flow rates are not publicly available). The data gathered for the Tables is likely the most exhaustive collection of PFAS detection data that exists. But such information does not and cannot replicate the actual allocations that the Claims Administrator will calculate based on the flow rates and PFAS concentration levels reported on submitted Claims Forms. That information is proprietary information in the possession of the members of the Settlement Class, which neither we nor Class Counsel can access.

Despite the tremendous amount of work that has taken place to provide the Estimated Allocation Range Tables, the ranges are necessarily based on data publicly available at the time of the Settlement, reasonable assumptions, and good faith estimates. The ranges presented in the Tables are not the actual settlement awards that will be allocated to each Impacted Water Source because: certain data is not publicly available; the full extent of Impacted Water Sources is unknown; and the extent of participation in the settlement among putative members of the Settlement Class is unknown. Absent such information, Class Counsel cannot provide assurances that the actual settlement amounts

will be at or even close to Class Counsel's estimated allocation. Nonetheless, the estimated allocation amounts represent our best effort to provide, in good faith, information to you based on publicly available information and the data you have provided as to your Impacted Water Sources. In preparing your good-faith estimates, we have not attempted to independently confirm the accuracy of any of the information you have provided to us as to any of your Impacted Water Sources.

V. Settlement Administration

The neutral, independent third-party Court appointees

The parties have agreed on several neutral, independent third-party professionals who will aid in the administration of the Settlement, all either already appointed through the Preliminary Approval Order or whose appointment is currently pending, including a Notice Administrator, a Claims Administrator, and a Special Master.

VI. Notice, Opt-Outs & Objections

All potential Class members have the right to submit an Objection to the Settlement, as well as the right to submit a Request for Exclusion if the Class member wishes to "opt out" – i.e., not participate in the Settlements.

The Settlement Agreements are contingent upon certain Class member participation thresholds being met—in other words, no more than a designated number of Class members across different categories (size of population served, type of Water Source, etc.) may elect to opt out. If the participation thresholds are not met, Tyco and/or BASF has the option to exercise its Walk-Away Right and terminate the Agreement.

The Notice will provide additional information and include instructions about submitting Objections and Requests for Exclusions.

VII. Scope of Resolution

A. What Claims are released under the Agreement?

The Settlement Agreements, if approved by the Court, would resolve Claims against the Settling Defendants by Public Water Systems – whether filed or unfilled, within the AFFF MDL or outside of it – for testing and remediation/treatment costs related to PFAS contamination in Settlement Class members' Drinking Water.

B. What Claims Survive?

Some Class members may have other PFAS- or AFFF-related Claims alleging damages unrelated to Drinking Water: including for example (but not limited to), Claims for soil contamination, private property damage, stormwater or wastewater, or natural resource damages. The Agreement does **not** release any Claims beyond those related to PFAS contamination in Class Members' Drinking Water. Releasing Parties—along with other injured Person(s), natural or legal—may continue to pursue non-Drinking Water Claims through available legal channels. To the extent

that Releasing Parties have both Drinking Water and non-Drinking Water Claims, the Settlement will affect the release/dismissal of their Drinking Water Claims only.

To further confirm, as made evident by their explicit exclusion of the Class definition, claims on behalf of states are not included in the Settlement, and any PWS that is owned and operated by a State or the Federal government and lacks the legal authority to sue or be sued is neither a Class Member nor impacted by this Settlement.

VIII. Next Steps & Timeline

Although the parties have reached agreements in principle, these Settlements are not yet final, and will not be unless and until the MDL Court approves it. The following are the next steps and important dates that will come into play in the approval and finalization process:

- **Settlement Dates:** The date on which the parties (Class Representatives, by and through Class Counsel, and Settling Defendants) signed the Settlement Agreement. *April 12, 2024 (for Tyco Settlement) and May 20, 2024 (for BASF Settlement)*
- **Motion for Preliminary Approval:** Class Counsel filed a Motion for Preliminary Approval with the MDL Court seeking preliminary certification of the proposed Settlement Class and preliminary approval of the Agreement. *April 26, 2024 (for Tyco Settlement) and June 3, 2024 (for BASF Settlement)*
- **Order Granting Preliminary Approval:** The Court issued Orders Granting Preliminary Approval to each respective Settlement. *June 13, 2024 (for Tyco Settlement) and July 3, 2024 (for BASF Settlement)*
- **Class Counsel fee petition deadline:** Class Counsel must apply for a fee consisting of a portion of the Settlement Funds and for reimbursement of costs and expenses. Class Counsel has made such filing as to both the Tyco and BASF Settlements (*July 22, 2024*)
- **Objections and Requests for Exclusion deadline:** All potential Class Members are given an opportunity to either object to the Settlement, or to “opt out” by way of a timely Request for Exclusion in compliance with the provisions of the Agreement that govern such Requests. *August 24, 2024 (objections deadline in Tyco Settlement); October 15, 2024 (objections deadline in BASF Settlement); September 23, 2024 (opt-out deadline in Tyco Settlement); October 15, 2024 (opt-out deadline in BASF Settlement)*
- **Final Fairness Hearing:** This shall take place before the Court; anyone wishing to be heard may request the opportunity to do so. *November 1, 2024 (for both Settlements)*
- **Order Granting Final Approval:** Provided all conditions for Settlements have been met, the Court shall then issue an Order Granting Final Approval at some time (approximately 30 business days) following the Final Fairness Hearings. [*December*], 2024²

² All dates in brackets are target estimates since the date of an Order Granting Final Approval, as well as other trigger dates, have not yet occurred and so are not yet known.

- **Final Judgment:** If no appeals are taken, the Orders become Final Judgments approximately 30 days after Final Approval. [*January 2025*],
- **Effective Date:** The Effective Date follows Final Judgment, with all pending Litigation dismissed with prejudice to the extent it contains Release Claims against Released Persons. [*January 2025*]

Helpful resources

You are also strongly encouraged to utilize the following resources available to you.

- ✓ The official Settlement website, housing the Claims portal and user guides for navigating same:
www.PFASWaterSettlement.com
- ✓ The Plaintiff Executive Committee (“PEC”)’s MDL litigation website, housing explanatory material, visual aids, recordings of video presentations and other helpful material:
www.AFFF-mdl.com
- ✓ The Frequently Asked Questions (“FAQ”) guide:
<https://afff-mdl.com/wp-content/uploads/PFAS-FAQ.pdf>
- ✓ Estimated allocation range tables, providing a per Impacted Water Source estimate of potential allocations to aid in Class members’ decision-making and strategic planning process:
<https://afff-mdl.com/wp-content/uploads/Tyco-Estimated-Allocation-Range-Table.pdf> and
<https://afff-mdl.com/wp-content/uploads/BASF-Estimated-Allocation-Range-Table.pdf>



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 4, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(10)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(10)
9-4-24

RESOLUTION NO. _____ R-775-24

RESOLUTION AUTHORIZING THE COUNTY TO PARTICIPATE IN THE PROPOSED CLASS ACTION SETTLEMENTS WITH TYCO FIRE PRODUCTS LP AND BASF CORPORATION IN THE PUBLIC WATER SYSTEMS' PORTION OF THE MULTI-DISTRICT LITIGATION MATTER, IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCT LIABILITY LITIGATION, MDL 2:18-MN-2873-RMG, CASE NO. 2:23-CV-03230-RMG, RELATING TO PFAS CONTAMINATION OF DRINKING WATER; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE, AFTER CONSULTATION WITH THE COUNTY ATTORNEY'S OFFICE, TO COMPLETE ALL DOCUMENTATION AND EXECUTE ALL RELEASES AND AGREEMENTS NECESSARY TO PARTICIPATE IN THE SETTLEMENTS WITH TYCO AND BASF IN THE WATER PROVIDERS' PORTION OF THE MDL; AND AUTHORIZING THE COUNTY ATTORNEY AND THE COUNTY'S OUTSIDE COUNSEL TO CONTINUE TO PURSUE LITIGATION RELATED TO PFAS ON BEHALF OF THE COUNTY

WHEREAS, this Board desires to accomplish the purposes set forth in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves and incorporates the foregoing recital as if fully set forth herein.

Section 2. Authorizes the County to participate in the proposed Class Action Settlements with: (a) Tyco Fire Products LP and its affiliated companies ("Tyco"), and (b) BASF Corporation and its affiliated companies ("BASF") in the Public Water Systems' portion of the Multi-District Litigation matter, In Re: Aqueous Film-Forming Foams Product Liability Litigation, MDL 2:18-mn-2873-RMG, Case No. 2:23-cv-03230-RMG, relating to PFAS contamination of drinking water (hereinafter, the "MDL").

Section 3. Authorizes the County Mayor or County Mayor’s designee to, after consultation with the County Attorney’s Office: (a) complete all documentation required to participate in the Tyco and BASF Settlements, such as Claims Forms; and (b) execute all releases and agreements necessary to finalize settlement of the Public Water Systems’ portion of the MDL with Tyco and BASF.

Section 4. Authorizes the County Attorney and the County’s Outside Counsel to: (a) continue litigating the County’s claims against the defendants remaining in the Public Water Systems’ portion of the MDL; and (b) continue pursuing litigation against any and all defendants, including Tyco and BASF, that may be liable for damages to the County that extend beyond the County’s drinking water supply.

The Prime Sponsor of the foregoing resolution is Chairman Oliver G. Gilbert, III. It was offered by Commissioner **Marleine Bastien** , who moved its adoption. The motion was seconded by Commissioner **Raquel A. Regalado** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 4th day of September, 2024. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis