

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

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IN RE: AQUEOUS FILM-FORMING \* MDL No. 2:18-mn-2873  
FOAMS PRODUCTS LIABILITY \*  
LITIGATION \* February 2, 2024  
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TRANSCRIPT OF FAIRNESS HEARING OF THE 3M SETTLEMENT  
IN THE CASE OF THE CITY OF CAMDEN VS. 3M, ET AL.  
BEFORE THE HONORABLE RICHARD M. GERGEL  
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

For the Plaintiffs:

Motley Rice LLC  
BY: JOSEPH RICE, ESQ.  
FRED THOMPSON III, ESQ.  
28 Bridgeside Boulevard  
Mt. Pleasant, SC 29464

Douglas and London PC  
BY: MICHAEL A. LONDON, ESQ.  
59 Maiden Lane, 6th Floor  
New York, NY 10038

Napoli Shkolnik PLLC  
BY: PAUL J. NAPOLI, ESQ.  
1301 Avenue of the Americas  
10th Floor  
New York, NY 10019

Baron and Budd  
BY: SCOTT SUMMY, ESQ.  
3102 Oak Lawn Avenue, Suite 1100  
Dallas, TX 75219

For the Defendants:

Duffy and Young LLC  
BY: BRIAN C. DUFFY, ESQ.  
96 Broad Street  
Charleston, SC 29401

Williams & Connolly LLP DC  
BY: JOSEPH G. PETROSINELLI, ESQ.  
725 12th Street NW  
Washington, DC 20005

Mayer Brown LLP  
BY: MICHAEL A. OLSEN, ESQ.  
71 S. Wacker Drive  
Chicago, IL 60606

Also Appearing:

ELIZABETH FEGAN, ESQ.  
RICHARD F. BULGER, ESQ.  
SAM HIRSCH, ESQ.  
JEFFREY B. KRAY, ESQ.  
JESSICA K. FERRELL, ESQ.  
RENE D. HARROD, ESQ.  
ROBERT KLONOFF, ESQ.

Court Reporter:

KAREN E. MARTIN, RMR, CRR  
PO Box 835  
Charleston, SC 29402

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software.

1 Friday, February 2, 2024

2 (WHEREUPON, court was called to order at 10:14 AM).

3 **THE COURT:** Good morning. Please be seated.

4 **ATTORNEYS IN UNISON:** Good morning, Your Honor.

5 **THE COURT:** Okay. This is the fairness hearing  
6 in the City of Camden vs. 3M. 2:18-2873 is the MDL  
7 number, Case No. 2:23-3147.

8 Could counsel who will be speaking for the  
9 plaintiff identify himself or herself for the record,  
10 please?

11 **MR. SUMMY:** Good morning, Your Honor. Scott  
12 Summy.

13 **THE COURT:** Very good. Thank you, Mr. Summy.

14 **MR. DOUGLAS:** Good morning, Your Honor. Gary  
15 Douglas.

16 **MR. NAPOLI:** Good morning, Your Honor. Paul  
17 Napoli.

18 **MS. FEGAN:** Good morning, Your Honor. Elizabeth  
19 Fegan.

20 **PROFESSOR KLONOFF:** Good morning, Your Honor.  
21 Bob Klonoff.

22 **MR. RICE:** I don't anticipate speaking, Your  
23 Honor. Joe Rice.

24 **THE COURT:** But you just did.

25 **MR. LONDON:** I am going to follow Mr. Rice.

1 Mr. London.

2 THE COURT: Thank you, Mr. London.

3 For 3M?

4 MR. BULGER: Good morning, Your Honor. Rich  
5 Bulger.

6 MR. HIRSCH: Good morning, Your Honor. Sam  
7 Hirsch.

8 MR. OLSEN: Good morning, Your Honor. Mike  
9 Olsen.

10 THE COURT: Mr. Olsen, good to see you again.  
11 We've missed you.

12 The objector from the Cities of Vancouver and  
13 Dupont Washington.

14 MR. KRAY: Good morning, Your Honor. Jeff Kray.

15 THE COURT: Good to see you again, sir.

16 And the objector from Broward County, Florida.

17 MS. HARROD: Good morning, Your Honor. Rene  
18 Harrod.

19 THE COURT: Thank you. Okay.

20 Let me go through the process and procedures  
21 we're going to follow today in handling this fairness  
22 hearing. We'll initially have class counsel explain the  
23 major features of the proposed settlement and explain how  
24 the settlement meets all the legal requirements and is  
25 fair, reasonable, and adequate.

1           3M counsel will then make any additional  
2 comments that they may wish. I would say that to the  
3 extent there's any disagreement with something plaintiff's  
4 counsel's has described in this settlement, I think this  
5 is the time to speak up because parties are relying,  
6 obviously, on these representations.

7           After we hear these initial presentations, we  
8 will hear from the objectors who have given us written  
9 notice that they wish to be heard at this fairness  
10 hearing. And I will -- we will initially hear from the  
11 Cities of Vancouver and Dupont. And then we'll hear from  
12 Broward County, Florida.

13           After that, class counsel and 3M will have a  
14 chance to respond to those objections. And thereafter,  
15 the Court will take the matter under advisement.

16           Are there any questions in terms of procedure  
17 from any of the counsel?

18           (There was no response.)

19           **THE COURT:** If not, Mr. Summy, I'll be glad to  
20 hear from you, sir.

21           **MR. SUMMY:** May it please the Court? Your  
22 Honor, Scott Summy. I'm here on behalf of class counsel,  
23 co-leads, and the PEC. For purposes of our presentation  
24 today, I'm going to cover the major features of the  
25 settlement. Mr. Douglas is going to cover the Jiffy Lube

1 factors and Rule 23(e). Ms. Fegan will briefly cover Rule  
2 23 and the legal requirements there and may also touch on  
3 notice. And then at the end, Your Honor, we would like to  
4 have Professor Klonoff give some observations in our  
5 closing remarks.

6 **THE COURT:** Very good.

7 **MR. SUMMY:** Your Honor, we are privileged to be  
8 here once again to discuss with the Court another historic  
9 settlement that has occurred in this MDL. And this will  
10 truly mark a milestone in this MDL. And we are honored to  
11 be here before you today, Your Honor.

12 On behalf of class counsel, the PEC, and the  
13 co-leads, we are here requesting final approval of the 3M  
14 PFAS Public Water System settlement. As this Court is  
15 aware, PFAS, known as the forever chemicals, is plaguing  
16 public water systems across this country. There are  
17 hundreds and thousands of water systems that have  
18 detections of PFAS. In fact, Your Honor, in July of 2023,  
19 the USGS, the US Geological Service, concluded that  
20 approximately 45 percent of those drinking tap water in  
21 this country there is a detection of PFAS. Fortunately,  
22 this settlement with 3M is going to go a long way in  
23 remedying that situation.

24 But, Your Honor, before I get into the major  
25 features, I do want to take just a moment to talk about

1 how we got here. Because as this Court is aware, we just  
2 passed the five year anniversary of this MDL.

3 **THE COURT:** We didn't have a birthday party.

4 **MR. SUMMY:** Or a cocktail party. And over the  
5 last five years, Your Honor, just to give a bit of a  
6 summary, class counsel, co-leads, the PEC, through all of  
7 its committees have logged 431,000 hours. We've coded and  
8 reviewed over 37 million pages of documents in discovery.  
9 We have conducted nearly 200 depositions. We have  
10 retained and worked with over 30 expert witnesses. We've  
11 briefed and argued multiple legal motions, including the  
12 famous government contractor defense motion which was a  
13 huge issue in this case as the Court is aware. And I know  
14 the Court spent a lot of time on those issues.

15 We've worked --

16 **THE COURT:** I've never felt neglected by y'all.

17 **MR. SUMMY:** We've worked on a bellwether process  
18 that started with ten water provider cases, did discovery  
19 on those and then narrowed them to three and narrowed them  
20 to one, which was the City of Stuart case. We spent just  
21 under \$20 million in out-of-pocket costs that relate to  
22 3M's share of the expenses. It has been a Herculean  
23 effort by a number of lawyers in this courtroom that have  
24 spent their last five years devoted their lives to this  
25 cause.

1           Your Honor, I want to touch a little bit on the  
2 history of the negotiations with 3M. They started in  
3 April of 2021, nearly three years ago. And while we made  
4 progress, we didn't get real true traction until this  
5 Court appointed Judge Lain Phillips and his team, Clay  
6 Cogman and Andrew Green, to assist the parties in reaching  
7 a resolution.

8           Once he was appointed and we started through the  
9 mediation process, things got serious. And I will tell  
10 you that I tried to go back and determine how many  
11 mediation sessions, either by streaming or in person, we  
12 had. And the best I could come up with by way of estimate  
13 is about 50 different sessions.

14           I can remember working numerous Sundays along  
15 with my co-leads, Michael London and Paul Napoli. We  
16 spent a tremendous amount of time negotiating with 3M and  
17 working with the mediators. I can in fact remember one  
18 night where we were at Tom Perrelli's Chicago office and  
19 left at 2:30 in the morning. And the reason I remember  
20 that is there was a big clock sitting outside the door as  
21 we walked out. And I remember we all took a picture of it  
22 saying can you believe this? So it has been a long, long  
23 road.

24           I also want to commend the lawyers who represent  
25 3M. They worked like crazy, like we did, for this



1 settlement. And Mr. Perrelli is not here today, but he  
2 was key in this settlement, along with Mr. Bulger,  
3 Mr. Hirsch, and Mr. Olsen. They worked tirelessly to work  
4 with us in trying to solve an issue that is plaguing this  
5 country's water systems.

6 **THE COURT:** I recall on the evening before the  
7 bellwether I was on the phone with all of you working out  
8 these last very complicated details.

9 **MR. SUMMY:** There is no question, Your Honor.  
10 And that occurred last summer because this settlement  
11 occurred on June 22nd of 2023. And the Court was  
12 extremely involved all the way up until the start of the  
13 bellwether trial which, fortunately, we avoided.

14 **THE COURT:** And let me just say because  
15 Mr. Perrelli is not here. I know the key role he played  
16 in facilitating this extremely complicated -- taking  
17 nothing away from defense counsel, but I think they all  
18 know just how critical Mr. Perrelli was in making this  
19 thing happen.

20 **MR. SUMMY:** I had conversations with him seven  
21 days a week, all hours of the day. And I will say that he  
22 is a gifted lawyer who, in effect, came up with a lot of  
23 the concepts. He helped come up with a lot of the  
24 concepts that are in the settlement that I'll talk about  
25 today.

1           **THE COURT:** And let me just say, one of the  
2 observations I have is that the PEC took -- felt like they  
3 were dealing with someone they could deal with in  
4 Mr. Perrelli. And defendants felt like they could -- it  
5 was someone they could deal with with you. And I think  
6 that leadership has played a critical role in making this  
7 happen.

8           **MR. SUMMY:** Yes. And I appreciate that, Your  
9 Honor. And I do agree that Mr. Perrelli was -- he wasn't  
10 here in the beginning, but he came in -- he was hired by  
11 3M to come in and assist with this settlement process.  
12 And he was someone, and I think my co-leads would agree,  
13 he was someone that we could talk to and deal with. And  
14 he was a great solver of issues. And we never got into a  
15 position where lines were drawn where we couldn't go  
16 forward. So he was a pleasure to deal with.

17           Your Honor, at the end of the day, we reached a  
18 settlement in the amount of 10.5 billion to 12.5 billion.  
19 And in a little bit, I'm going to explain why we keep  
20 saying 10.5 to 12.5 and how that works. But make no  
21 mistake about it, this is the largest drinking water  
22 settlement in American history. Dupont, which we had a  
23 hearing on earlier, is the second.

24           These funds are going to assist public water  
25 systems across the United States in dealing with impending

1 state and federal regulations. And at the end of the day,  
2 the beneficiary of that is the public of the United  
3 States.

4 I'm going to move into the features of the  
5 settlement. And where I want to start is with the class  
6 definition.

7 As the Court is aware and the class members and  
8 the lawyers in this courtroom are aware, there are two  
9 phases. There is a Phase One and a Phase Two. And these  
10 are public water systems that are in the class definition.  
11 And the difference between Phase One and Phase Two is in  
12 Phase One, the public water systems had detected PFAS  
13 chemicals before the date of the settlement, June 22nd,  
14 2023. Phase Two is for public water systems that have not  
15 detected it but are required to test under UCMR5. And  
16 I'll be talking about UCMR5. But in the end in this  
17 particular settlement with these class definitions there  
18 are approximately 12,000 public water systems that meet  
19 these definitions.

20 The first thing I want to talk about is one of  
21 the things that we attempted to do, which is we wanted to  
22 deal with not only the litigation in the settlement, but  
23 we wanted to time that up with the regulatory requirements  
24 that public water systems faced and they're facing those  
25 today.

1           The first one is the EPA announced in March of  
2 2023 last year drinking water standards for PFOA and PFOS  
3 and a hazard index for some additional PFAS chemicals.  
4 These are the strictest drinking water standards in  
5 American history. It is anticipated that these will  
6 become final over the next several months. And public  
7 water systems across the country will have three years to  
8 come into compliance once those are adopted. So we had to  
9 take that into account in the timing of how we set the  
10 settlement up.

11           The second thing I want to mention is what the  
12 EPA did in 2021 wherein they adopted UCMR5. In UCMR5, it  
13 requires water systems that serve 3300 people or more to  
14 test for PFAS chemicals over the next three years starting  
15 last year.

16           So that testing is going on. And we know that  
17 some folks have already tested and they've detected it and  
18 they're in Phase One. And we know others will be testing.  
19 And if they find it, they'll be in Phase Two. And even if  
20 they are just testing, they are in Phase Two. So we had  
21 to match up these regulatory requirements in the  
22 settlement, which we did in all of our timing and  
23 concepts.

24           Now I want to get into this variable amount of  
25 the settlement. And before I do so, the one thing I want

1 to just discuss briefly is just the amount, even if we  
2 just take the 10.5 billion. We already know it's the  
3 largest drinking water settlement. But just to put it in  
4 perspective a little bit, Congress last year in February  
5 passed the infrastructure bill. And in that bill they  
6 basically put \$10 billion to help communities across the  
7 country deal with emerging contaminants. What that means  
8 is is there are other chemicals besides PFAS that public  
9 water systems deal with. These funds can be accessed for  
10 that. There's only about five billion of that that is  
11 earmarked for PFAS. And most of that is going to  
12 disadvantaged communities. And while that is a very good  
13 thing, it helps put perspective into what 3M has put on  
14 the table for this problem. The 3M settlement, even at  
15 10.5, actually eclipses what the federal government has  
16 done. It's that powerful.

17 The other thing that I want to talk about is  
18 just to give a glimpse into the negotiations and the  
19 amount that we negotiated. Because I am convinced that we  
20 negotiated maximum dollar that we could get out of 3M.  
21 And the reason I say that is because when we were in these  
22 negotiations, we were constantly looking at and studying  
23 the financial condition of 3M. At that time the market  
24 cap of the entire company was \$53 billion. They were also  
25 facing ear plug litigation, which they eventually resolved

1 for 6.5 billion. And they're also facing other PFAS  
2 claims.

3 And we all know, and we've talked about in this  
4 courtroom before, the PFAS problem as a whole is larger  
5 than all of the companies put together. And so it was  
6 important that class members realize that the only way  
7 this was going to work is you have to take less for the  
8 greater good.

9 **THE COURT:** We had a discussion, I'm sure you  
10 recall this, some years ago in which I made the  
11 observation that even if the plaintiffs maxed out and won  
12 every issue, there was not enough money among the  
13 defendants to pay for the damages alleged by the  
14 plaintiffs, and that y'all needed, I told you at the time,  
15 I'm sitting here and I've got the best lawyers in America  
16 on both sides here, but you need to at least step back and  
17 together go to Congress to explain this problem. Because  
18 as significant as this settlement is, it is -- several  
19 objectors, you know, made the point, there isn't -- it  
20 doesn't pay for the whole damage. And you don't claim it  
21 does.

22 **MR. SUMMY:** That's correct.

23 **THE COURT:** Because it just -- and, you know, I  
24 found it very interesting and I read with a great deal of  
25 care the provisions of this settlement which discussed in

1 detail the real risk that this company could be pushed  
2 into bankruptcy. And I don't think, you can correct me, I  
3 don't think it's in the interests of anyone to push 3M  
4 into bankruptcy.

5 **MR. SUMMY:** It's truly not. And, Your Honor,  
6 you talked about it before that none of these companies  
7 can pay the full amount of damages. And the one -- the  
8 number one reason that I heard why people opted out is  
9 because they weren't getting a hundred cents on the  
10 dollar.

11 **THE COURT:** I've heard that as well. And it is  
12 true.

13 **MR. SUMMY:** And we just endorsed it. We would  
14 say, you're right, but you have to look at it from a more  
15 global perspective. Because what is the alternative? Do  
16 you really want to end up in bankruptcy court? And I can  
17 tell you that one of the defendants in this case has gone  
18 bankrupt as a result of PFAS.

19 **THE COURT:** And it very much disrupted y'all's  
20 trial strategy.

21 **MR. SUMMY:** It not only disrupted the trial, but  
22 we have been dealing with that bankruptcy, the PEC and the  
23 co-leads. And it is not a process that we would like to  
24 take these public water systems down. It is inefficient.  
25 It is costly. And it takes forever. And you don't get --

1 you get pennies on the dollar in the end. It is not a  
2 place to be.

3 So this settlement is truly in the best interest  
4 of these public water systems. Because even though you're  
5 not getting a hundred cents on the dollar, you are taking  
6 less for the greater good, and you are in a much better  
7 position to stay in this settlement and get this money  
8 than you are -- than the alternative.

9 And it's something that we're proud of. It's  
10 something that we hope folks took into account or that  
11 they will take into account as they make decisions whether  
12 or not to come back in. Because it's important.

13 And fortunately, I will say when you look at it  
14 as a whole, the overwhelming majority of class members  
15 certainly understood this because it's something we worked  
16 very hard on. And they did stay in the settlement. And  
17 they did agree to take less for the greater good.

18 The next thing I want to get into, Your Honor,  
19 is this slide that's on the table. Because it gets into,  
20 you know, how -- is it the 10.5 or is it the 12.5? And I  
21 just want to explain how that works.

22 One of the things that we had a lot of  
23 discussion about with 3M is the Phase Twos. Because the  
24 Phase Twos, you don't know exactly how many are going to  
25 detect it in the end. And so we went back and forth on



1 the money about how to deal with that. And we came up  
2 with a creative way in which to take that into account,  
3 that unknown factor of how many Phase Twos will actually  
4 detect PFAS. And what we did is we came up with a floor  
5 and a cap. And this is in Section 6.8.9 and 10 of the  
6 Master Settlement Agreement.

7 And the way it works is is that 6.875, which is  
8 55 percent of the 12.5, was placed into Phase One. And  
9 that will be allocated to the Phase One class members  
10 leaving a guarantee of 3.625 that will go to Phase Two  
11 with a cap of 5.625 that could go to Phase Two.

12 So the way it works, if you see in the middle of  
13 the screen July 2026, we know that the UCMR5 testing is  
14 '23, '24, and 2025. Once that closes down, the EPA is  
15 going to have final numbers. And of course, class members  
16 that are doing that testing will already know. They will  
17 have until July 2026 to put in a claim form for those who  
18 have detected it into the claims facility. At that time  
19 the claims administrator and the special master will take  
20 everything that has been submitted by the Phase Twos and  
21 they will calculate what would they have gotten if they  
22 were a Phase One using the exact same allocation formula  
23 that we're going to talk about.

24 Once that number is determined, if that number  
25 comes in below 3.625, then 3.625 will be paid. If it

1 comes in between those two numbers, 3.625 and 5.625, 3M  
2 will pay that number. If it comes in above 5.625, 3M will  
3 pay 5.625.

4           However, one of the things that we worked with  
5 3M very hard to do is we came up with what we call the  
6 great equalizer clause. And that clause is  
7 Section 6n.8.11. And what that clause does is it says if  
8 after we calculate the Phase Two values it comes in under  
9 that 3.625 or it comes in above the 5.625, an adjustment  
10 will be made because of the payment schedule. The payment  
11 schedule, which is paying the money out over time, allows  
12 adjustments to be made to create complete equity between  
13 Phase One and Phase Two. We think that this is a very  
14 good way to solve this issue. It's creative and it works  
15 because of the payment schedule.

16           And I'm going to talk just a minute about this  
17 payment schedule. I've got it up on the screen. And as  
18 we know in the payment schedule, Phase Ones will be paid  
19 out through 2033. Phase Twos will be paid out through  
20 2036. Now, the beautiful thing about the payment schedule  
21 is it allowed us to get more money from 3M. Because  
22 allowing them to pay it out allowed them to commit more  
23 dollars to this issue.

24           The second thing is is one of the objectors, and  
25 I can't remember who, raised the issue of, well, paying it

1 out over time increases the bankruptcy risk. We disagree.  
2 We can it actually helps on that issue because it allows  
3 them to pay it out over time as they continue to make  
4 money.

5 The third thing the payment schedule does --

6 **THE COURT:** It's interesting, one of the  
7 controversies in some settlements where the defendant  
8 continues to function but is arguably creating real  
9 societal harm there is sort of this those injured are  
10 benefiting from an ongoing injury of others, the opioid  
11 settlement and so forth.

12 **MR. SUMMY:** Yes.

13 **THE COURT:** And no criticism, it is a  
14 complicated set of factors you have to consider. But  
15 that's really not the situation here. 3M is not in the  
16 PFAS business any further.

17 **MR. SUMMY:** That is correct. Your Honor,  
18 they've gotten out of it. They've announced that and  
19 they've gotten out of it. And as this Court knows, they  
20 actually got out of the fire foam PFAS business just at  
21 the turn of the century at 2000.

22 **THE COURT:** And the so-called forever chemicals.

23 **MR. SUMMY:** That's correct.

24 **THE COURT:** You know, one of the concerns and I  
25 shared it with counsel was that if you forced 3M to trial,

1 and there are certainly -- we all recognize the potential  
2 for devastating verdicts, it will simply put 3M into  
3 bankruptcy. There won't be -- and what will happen, who  
4 knows, right?

5 **MR. SUMMY:** Right.

6 **THE COURT:** Mr. Summy, I don't know how much  
7 experience you have in getting a verdict and having a  
8 defendant in bankruptcy. It is no pleasure.

9 **MR. SUMMY:** I've had the pleasure of being in  
10 bankruptcy court, I'd say the displeasure of being in  
11 bankruptcy court in several times in several large cases.  
12 And I'm just telling you, you don't want to be there.

13 **THE COURT:** And you know what I found as a  
14 litigator was that I always associated bankruptcy counsel.  
15 Because the internal logic of bankruptcy is so different  
16 from every other area of law. And if you don't know -- if  
17 you don't understand bankruptcy law, your instincts about  
18 what the outcome would be and how an issue is resolved is  
19 often upside down.

20 **MR. SUMMY:** It truly is. And it's -- you're  
21 also dealing in a world where, you know, your claim, your  
22 individual claim is just not going to get dealt with.  
23 You're in there with the masses. And it's just a terrible  
24 process. It's not where you'd want to be. I think you'd  
25 rather be here where you've got some certainty and you've

1 got a chance to get real dollars without a trial. And  
2 we're going to talk about some of the defenses you're  
3 going to avoid here in a minute.

4 But the other thing that we like about this  
5 structure is it actually matches up really well with what  
6 is facing water providers. Because the way we structured  
7 it is in both Phase One and Phase Two, a big chunk of the  
8 money is coming early in the first two years of each Phase  
9 One and Phase Two to help with the infrastructure costs  
10 that we know public water systems are facing. And then it  
11 gets paid out over time to help systems deal with their  
12 annual operation and maintenance costs. So we were able  
13 to match these payments up with the need, the active --  
14 the needs in the real world of a public water system that  
15 is going to put treatment on to their water sources.

16 So we think that the payment schedule works  
17 really well. We think that it also -- it allows for more  
18 money to be paid because it's allowing them to pay it out  
19 over time.

20 Talking about bankruptcy, Your Honor, one of the  
21 things that we're all so very proud of and is certainly a  
22 feature of the settlement and that is that we built in in  
23 Section 12.7 of the MSA, we built in some bankruptcy  
24 protection provisions for those who are in the class. And  
25 I'll just highlight a few of those.

1           One is 3M is restricted from engaging or  
2           spending large, massive expenditures that would put these  
3           payments at risk. And that's important to the class.

4           The second thing is is if in the event they did  
5           go bankrupt, there is protection because the class members  
6           in that bankruptcy would be scheduled as liquidated,  
7           non-contingent, and undisputed. These are --

8           **THE COURT:** How does that compare to people who  
9           opt-out?

10          **MR. SUMMY:** The people who opt-out,  
11          unfortunately, will not receive these protections and they  
12          will be listed as unsecured creditors. And if you know  
13          anything about bankruptcy, if you're an unsecured  
14          creditor, you're in there with the rest of the world who  
15          may be a creditor to 3M. And so you don't have the  
16          protections that you have if you were in the class, which  
17          you are receiving as a benefit of this settlement.

18          **THE COURT:** I recall towards the end this is a  
19          real area of which y'all worked hard to building these  
20          protections. Because you've never been casual about the  
21          risk that this could be the outcome. Nobody wants it.

22          **MR. SUMMY:** That's right.

23          **THE COURT:** But there may be forces outside your  
24          control that may produce this. And I just -- for -- I  
25          think we all recognize that part of the fairness hearing

1 is an audience with the opt-outs, right?

2 **MR. SUMMY:** Right, sure.

3 **THE COURT:** Many of whom are in this room.

4 **MR. SUMMY:** Sure.

5 **THE COURT:** And some who are, you know, who are  
6 listening online. And I think the danger is -- you know,  
7 I've had a lot of pushback from individual parties in this  
8 case, defendants in particular, saying, you know, I wish  
9 my motion to dismiss or my issue could be heard right now.  
10 And we've got, I don't know, thousands of cases, 20,000  
11 plaintiffs. And something gets sacrificed. The good for  
12 defendants is they're not in before 675 fellow judges  
13 litigating this, which by itself would be ruinous. Right?

14 **MR. SUMMY:** Right.

15 **THE COURT:** But I think for folks who say I can  
16 do better myself, we've -- you know, we've talked a bit  
17 about that. I'm not turning these cases over to my  
18 colleagues around the country any time soon. We've got  
19 lots of issues, lots of parties, lots of questions that  
20 need to be resolved first. So there's going to be a  
21 considerable delay. And for the lawyer who says I can do  
22 better than Gary Douglas has as the only guy living whose  
23 tried one of these.

24 **MR. SUMMY:** Right.

25 **THE COURT:** And I can do better than that. And

1 if they succeed and they push 3M into bankruptcy, there's  
2 going to be a high price to pay for everybody who is out  
3 in the wilderness.

4 **MR. SUMMY:** There is no doubt, Your Honor. And  
5 that harkens back to the taking less for the greater good  
6 and avoiding all of this. And, you know, I think that  
7 there could also be, if that happens, a lot of regret by  
8 opt-outs who may not have recognized the realities of all  
9 of these things.

10 **THE COURT:** What's the old bird in the hand  
11 worth versus in the bush, right? You know, those of us  
12 who litigated major claims always recognized one of our  
13 risks was that the defendant on a great case didn't have  
14 the capacity to pay the freight, right? So you were  
15 confronted of taking less than a hundred cents on the  
16 dollar not because your case wasn't strong but because the  
17 defendant wasn't sufficiently strong to pay it.

18 **MR. SUMMY:** Right.

19 **THE COURT:** And I mean, that's just part of a  
20 reality in the litigation world that it is rare to find  
21 defendants with the capacity to fully satisfy major  
22 verdicts. And, you know, 3M is an iconic company.  
23 They're a great company. They've done tremendous things.  
24 But it does not have the capacity to pay these damages.

25 **MR. SUMMY:** Correct. Correct, Your Honor. And



1 that's why truly this settlement is in the best interests  
2 of everyone. It provides that protection if the worst  
3 happens, which we hope it doesn't. We hope that 3M  
4 thrives actually so that we can obtain these dollars for  
5 these systems. But for those in the class, they at least  
6 have the insurance of this bankruptcy protection. It's  
7 one of the key features and one of the reasons that folks  
8 should be in this thing.

9 Your Honor, the next thing I want to cover is  
10 baseline testing. This is a concept that I think we  
11 talked about in Dupont, but it works a little differently  
12 here and I'll explain why.

13 Baseline testing is a concept we came up with  
14 because if you've ever been involved in trying to settle  
15 water cases in the United States, what happens every time  
16 is the defendant comes in and says, okay, I'll pay you X  
17 dollars, but I want you to release all of your water  
18 sources, even the ones that are un-hit. Because, you  
19 know, you've got a city that has ten drinking water wells,  
20 five are hit, five are not. Defendant says I'll pay you  
21 for the five, but you have to release all ten. We fought  
22 hard to fight back on that. And we said we don't want to  
23 release all ten.

24 So we came up with -- and the defendants always  
25 said, well, wait a second. The other five might be

1 contaminated. You haven't tested them. So we came up  
2 with a concept of baseline testing, which in effect  
3 requires class members to test all their water sources  
4 now. And then you establish a baseline.

5           And what happens is is using our example of the  
6 ten drinking water wells, if you do baseline testing,  
7 you'll get paid on the five. And if the five that are not  
8 hit, you've done the baseline testing, you get to reserve  
9 that claim through 2030. And if they get hit, you get to  
10 come back into the supplemental fund.

11           Remember in Dupont the way that worked is is if  
12 you baseline tested the five that weren't hit, you didn't  
13 release them. But you had to go back after them if you  
14 find it. Here, you don't have to do that. You can come  
15 right back into the supplemental fund.

16           And when I get to the supplemental fund, I'll  
17 discuss that. But we've actually put some additional  
18 money than we did in Dupont and additional percentage in  
19 the supplemental fund to account for just this issue. So  
20 it's a real benefit.

21           Another benefit is that we have set aside  
22 \$104 million for Phase Two to test. And the reason is  
23 that we know Phase Twos are going through the UCMR5  
24 testing obligations. But under UCMR5, you only have to  
25 test one time in your water system. So we've added

1 additional funds here so that folks can test all their  
2 water sources. That way they will comply with baseline  
3 testing. They'll be able to make a claim for anything  
4 that has a detection. And then anything that doesn't have  
5 a detection, they're set in case a detection appears  
6 before the end of 2030.

7 **THE COURT:** Are they in Phase Two if they were  
8 detected later?

9 **MR. SUMMY:** So what happens is if they detected  
10 already, they're in Phase One.

11 **THE COURT:** Yes.

12 **MR. SUMMY:** Even though they haven't detected in  
13 all their water sources.

14 **THE COURT:** Okay.

15 **MR. SUMMY:** But what happens is is that if you  
16 comply with baseline testing, you get to come back into  
17 the action fund if you find it later.

18 **THE COURT:** In Phase One.

19 **MR. SUMMY:** That's correct. You go into the  
20 supplemental fund. And the same thing, it works the same  
21 way with Phase Twos. Let's say when you do your testing  
22 for Phase Twos, you'll be able to make your claim in 2027  
23 after we get through the UCMR5 period. If you've done  
24 this baseline testing, if you have particular water  
25 sources that weren't hit originally but get hit, there's a

1 supplemental fund for Phase Two as well. So it is a huge  
2 benefit and solved a lot of issues for us in the  
3 settlement because it dealt with this what do we do with  
4 the un-hit water source problem.

5 The next thing I want to talk about, Your Honor,  
6 is just the objective allocation procedure. As this Court  
7 is aware, we've talked about it several times in live  
8 court. But this took nearly two years to develop. It was  
9 one of those things that we spent a lot of time on because  
10 we built -- you know, we built a conceptual model where we  
11 were trying to determine, all right, how do we allocate  
12 this money? And when we make little changes, we've got to  
13 make sure that it's completely objective.

14 And what it does is is that you have all kind of  
15 public water systems across the country. And someone  
16 says, well, I'm going to use GAC filtration, which is  
17 granular activated carbon, or I'm going to use reverse  
18 osmosis, or I'm going to use ion exchange to deal with my  
19 particular water sources. So we had to take that into  
20 account.

21 So what we came up with with experts is is it  
22 doesn't matter what you decide individually you want your  
23 treatment to be. The way the allocation model works is  
24 you basically put in two factors that no matter what your  
25 treatment decisions are, these two factors are the key to

1 relevant things that you will use and your engineers will  
2 use in coming up with your treatment; and that is, your  
3 flow rate, how much water is coming through the water  
4 source that it has to be dealt with and treated; and your  
5 PFAS score, which is a combination of what your  
6 concentration is.

7           And what the model will do, and we were very  
8 fortunate here, because in March of last year, the EPA  
9 came out with cost curve numbers for treatment for PFAS.  
10 And so what our experts did is is they took those cost  
11 curves. They put them into a model. And then what you do  
12 is you take you flow rate, and you take your PFAS score --  
13 and again, on your PFAS score, we give you the benefit of  
14 the doubt. You get to take your highest score, your  
15 highest concentration you've ever found giving you your  
16 best day. And that's placed in the model with the EPA  
17 cost curves and it will submit an allocated amount for  
18 each water source that is contaminated or has a detection.

19           So back to our example, you'll get five awards  
20 in the system that has ten wells and five are hit. You'll  
21 get five awards, one for each one that has a detection.

22           The next thing is we've also given some bonuses  
23 to class members that have certain issues. For example,  
24 if you were a litigant, you filed a case and made this  
25 settlement, you attributed to this settlement happening,

1 you're getting a bonus on your score, you're getting a  
2 multiplier.

3 If you were a bellwether, you're also getting a  
4 multiplier because you had to undergo the issue of  
5 producing all your documents, putting your witnesses up  
6 for deposition, et cetera. So you're getting a bonus for  
7 that.

8 Probably the most important bonus though is is  
9 that if one of your water sources is currently above the  
10 proposed federal standard of four parts per trillion or  
11 any state standard, you're getting a very large bonus.  
12 And the reason is is because those folks have no choice  
13 but to treat. They will have to treat to come into  
14 compliance. And so that is taken into account in the  
15 allocation procedures.

16 We're very proud of the allocation procedures.  
17 And I will say that with respect to 3M, they actually dug  
18 into these allocation procedures in a very detailed  
19 fashion, particularly Rich Bulger and Sam Hirsch. They  
20 worked with us very closely. They had experts and they  
21 dug into the allocation procedures because they wanted  
22 them to be extremely fair. I had I can't tell you how  
23 many calls with these guys, and we got it to a point where  
24 everyone was satisfied. This is the best, objective way  
25 to do it. And I think Mr. Hirsch even told me it was the

1 best thing he'd ever seen. So it's very good.

2 An additional thing that we're proud of is the  
3 special needs fund and the supplemental fund. The special  
4 needs fund is in essence a separate fund from the action  
5 fund. The action fund is where the allocation procedures  
6 will take place. But we created a separate fund that 45  
7 days after the claims facility opens, you can apply for  
8 additional monies. And this is monies beyond what you're  
9 getting compensated for for your treatment.

10 And I'm just going to give you a few examples,  
11 Your Honor. One is some of the folks that we heard from  
12 we had to purchase -- we had to shut down wells and  
13 purchase supplemental water. They spent money on buying  
14 supplemental water. Some folks had to shut down wells and  
15 drill new wells. Some people had to relocate old wells.  
16 So these are some of the things that were sort of  
17 emergency --

18 **THE COURT:** I recall some had lakes they could  
19 no longer use as a water source.

20 **MR. SUMMY:** That is correct. That is absolutely  
21 correct.

22 **THE COURT:** That would be another example.

23 **MR. SUMMY:** Yes, that is another example. And  
24 if you spent money in one of these unique circumstances,  
25 you can apply for this special needs fund. And we have

1 put in both Phase One and Phase Two, we've put five  
2 percent of the settlement funds into the special needs  
3 fund. There is going to be a lot of money to deal with  
4 these situations.

5 The other thing, and I talked about it, is the  
6 supplemental fund. In Dupont, we put five percent in the  
7 supplemental fund. Here we put seven percent in the  
8 supplemental fund. The reason we put additional money in  
9 here is because of the difference that I described  
10 earlier. Because you also are going to have in this  
11 settlement water sources that are not contaminated today  
12 but they're being released. But if they become  
13 contaminated, they can come straight into the supplemental  
14 fund.

15 The other reason for the supplemental fund is we  
16 know that circumstances change, especially when it comes  
17 to pollution. One, you may have a system that's below the  
18 standard today, or a water source, but that water source  
19 goes above the standard later.

20 Second, the reverse of that is, you may have the  
21 same contamination tomorrow that you have today in a water  
22 source, but the standard in your state came down and now  
23 you're above it. If that happens, you can come back into  
24 the supplemental fund and get additional money to help you  
25 with those particular water sources.



1           Now I want to get into some of the defenses.  
2           And Mr. Douglas is going to get into even -- get into this  
3           even in more detail. But I do want to talk --

4           **THE COURT:** Don't take his thunder.

5           **MR. SUMMY:** I'm not going to take it away. But  
6           one of the things that's very important is, I think that  
7           is underappreciated by opt-outs, is the obligation to  
8           prove causation in these cases. We call it often product  
9           identification. You've got to show, if you opt-out and  
10          you pursue 3M, you've got to show that it's their PFAS  
11          that's in your particular water source.

12          And I will say, just doing some analysis on  
13          this, and this is disturbing to me, there are  
14          approximately 25 percent of the opt-outs that do not have  
15          PFOS in our data in their water system. PFOS is one of  
16          the signature chemicals that was made by 3M. And it is  
17          disturbing to me that you would opt-out of this settlement  
18          without the obvious existence of PFOS in your water  
19          system.

20          **THE COURT:** There is some branch PFOA I think?

21          **MR. SUMMY:** Yeah. So what I was going to say is  
22          it doesn't mean you don't have any 3M product, because  
23          they did make PFOA that was branched. But the only way  
24          that you could determine that is you're going to have to  
25          do specialized testing. That's expensive.

1           **THE COURT:** But the bulk of what 3M produced was  
2 PFOS, correct?

3           **MR. SUMMY:** That's correct.

4           **THE COURT:** So I think the branched PFOA is a  
5 relatively small percentage. Am I right about that?

6           **MR. SUMMY:** You are. Certainly, you can find  
7 it, but PFOS certainly overwhelms that. And so I'm just  
8 talking sort of, you know, at a baseline level if you  
9 haven't done the testing to show you've got branched PFOA.

10           **THE COURT:** Help me with that. I think y'all  
11 gave me some numbers in the Dupont settlement using the  
12 City of Stuart --

13           **MR. SUMMY:** Yes.

14           **THE COURT:** -- because y'all really did a deep  
15 dive. Do you recall how those allocations worked? As I  
16 recall, the branched PFOA was a pretty low number.

17           **MR. SUMMY:** Yeah. And I think, and Mr. Douglas  
18 has that slide and he's going to cover it, but from my  
19 recollection is that the PFOS was like 87 percent.

20           **THE COURT:** That's what I remember.

21           **MR. SUMMY:** And the branched PFOA was the small  
22 percentage.

23           **THE COURT:** Like 6 percent.

24           **MR. SUMMY:** Like around 6 percent.

25           **THE COURT:** Mr. Douglas?

1           **MR. DOUGLAS:** 6.7 percent exactly, Your Honor.

2           **MR. SUMMY:** Good memory, Your Honor.

3           **THE COURT:** Well, I have nightmares at night.  
4           So I guess your point is if you've got 25 percent opting  
5           out with no PFOS, they have about, you know, a, what,  
6           93 percent chance they don't have any?

7           **MR. SUMMY:** Correct. And that's why I'm raising  
8           it, Your Honor. Because when we looked at it, you know,  
9           sometimes people opt-out because maybe they feel like  
10          their neighbor's opting out or whatever. But it has to be  
11          more than that. You actually have to dig into here and  
12          look at your chemistry. Because if you are staying out  
13          and you want to pursue 3M, you may have opted out and  
14          don't have their chemicals in your water.

15          **THE COURT:** We had this come up in Dupont.  
16          Because when we got to the bottom of Dupont's actual  
17          contribution to the problem was smaller than I think y'all  
18          thought at the beginning.

19          **MR. SUMMY:** Right.

20          **THE COURT:** And you had people opting out who,  
21          statistically, the odds were overwhelming they had no  
22          Dupont.

23          **MR. SUMMY:** That is correct.

24          **THE COURT:** And they opted out.

25          **MR. SUMMY:** Right. And I'd hate to be the

1 lawyer later who is having to explain that. So we'd like  
2 to get this on the record and out there now because there  
3 is still a chance if you have opted out of 3M and you  
4 don't have these chemicals, you may want to get back in.

5 **THE COURT:** Well, if it's one in four, have you  
6 told those parties this result?

7 **MR. SUMMY:** It's interesting, Your Honor. I  
8 just discovered this getting ready for this hearing  
9 because, just on a whim, I thought, you know what, maybe  
10 we should look at this and we discovered it. And one of  
11 the things that we talked about is maybe we should reach  
12 out to the ones that I'm identifying here --

13 **THE COURT:** I think you should.

14 **MR. SUMMY:** -- and just notify them that, hey,  
15 you can do what you want, but be aware.

16 **THE COURT:** You know, there's a way to analyze  
17 something at 30,000 feet.

18 **MR. SUMMY:** Right.

19 **THE COURT:** But you guys have been down in the  
20 weeds.

21 **MR. SUMMY:** Correct.

22 **THE COURT:** And it's just a lot more complicated  
23 than it looks.

24 **MR. SUMMY:** Right.

25 **THE COURT:** I mean, to the extent that

1 25 percent, if they've got PFAS, they've got likely a  
2 telomer product --

3 **MR. SUMMY:** That's correct.

4 **THE COURT:** -- which we're still litigating.

5 **MR. SUMMY:** That's correct.

6 **THE COURT:** Right? So they haven't given up  
7 maybe the claim, if they have a claim, but they most  
8 likely have. I just would just urge those lawyers who are  
9 advising and those water districts that they insist before  
10 the deadline passes for where they can't withdraw their  
11 opt-out that they insist on making a determination whether  
12 they in fact have PFOS.

13 **MR. SUMMY:** I know. I found it disturbing and  
14 had some folks look at it on a whim that work with me.  
15 And just thought to myself, we have got to get -- we've  
16 got to bring this up because we don't want water systems,  
17 like you said, who haven't drilled down on this to  
18 mistakenly opt-out. When they don't have product ID  
19 against 3M, they can stay in and take the money and get  
20 all the benefits with none of the downside. So that's one  
21 of the reasons I raised it.

22 The other thing and I talked about this with --  
23 in the Dupont settlement, and I call it the big three  
24 because, you know, as a lawyer that does water cases all  
25 over the United States, it's three of the things that I

1 jump on right out of the gate in looking at cases that  
2 we're considering representing clients.

3 And, you know, the first one is statute of  
4 limitations. And again, you've got to look at your state  
5 law. But one of the things that is prevalent here is  
6 that, remember, the government back in 2013 through 2015  
7 required large systems to test for PFAS, those who served  
8 more than 50,000 people. And that testing occurred a long  
9 time ago. And there were a number of systems that  
10 detected it. And I don't want to see people go down the  
11 road who have had this in their system for well over ten  
12 years, and then bring a lawsuit and then only to find out  
13 that they are kicked out of the case because of the  
14 statute of limitations.

15 **THE COURT:** And the statute of limitations is  
16 not a defense for those that are in the class.

17 **MR. SUMMY:** That is correct. And the reason I  
18 bring these defenses up is these are the defenses you're  
19 avoiding by staying in the class. It doesn't matter if  
20 you detected it 40 years ago, you get paid. But if you --  
21 this is just a risk if you're outside. These are real  
22 risks.

23 And even maybe even a greater risk is the  
24 statute of repose. There are a number of states that put  
25 a time period upon which you can sue a product

1 manufacturer. And that time period doesn't run from the  
2 time you detected it in your water source. It runs from  
3 the date the product was delivered for use, and that may  
4 have been at an airport or whatever that eventually  
5 contaminated you. That product could have been delivered  
6 ten years prior to you detecting it, 20 years prior to you  
7 detecting it. It is a massive risk if you are in a state  
8 with a stringent statute of repose.

9 **THE COURT:** Have you made any determination  
10 regarding the opt-outs where they might fall on these  
11 statute of limitations and statute of repose issues?

12 **MR. SUMMY:** Your Honor, I haven't. But it is an  
13 analysis that probably is worth doing, you know, if we  
14 categorized them into a particular state, we identify the  
15 states that have these particular issues. It may well be  
16 worth doing. Because these are -- these, to me, and I  
17 call them the big three because I try to do this analysis  
18 before I bring the case. Because I don't want to get down  
19 the road and have this come up. But these are the things  
20 that are real risks to opt-outs. And I want to make sure  
21 they're aware of it.

22 The third big one in water cases is are you in a  
23 state where the law is not great for you where you are  
24 below the regulatory standard? And this one's near and  
25 dear to my heart because I live in Texas. And there's a

1 case there called Taco Cabana vs. Exxon which,  
2 unfortunately for plaintiffs, rules that if you're not  
3 above a standard, you are not damaged and have no  
4 standing.

5 And I will tell you that one of the very first  
6 PFAS cases was brought by my firm in around 2013 time  
7 period in Florida. And we lost this on a motion to  
8 dismiss. The case was dismissed because we were below the  
9 regulatory standard. There wasn't a regulatory standard.  
10 But we lost the case on a motion to dismiss right up  
11 front. It's a real risk.

12 **THE COURT:** Because you have to show you were  
13 above an established regulatory standard.

14 **MR. SUMMY:** That is correct. And that's what  
15 the court ruled, that we didn't have standing for damages  
16 because we were not in violation of any sort of standard.

17 Now, there are cases that go the other way in  
18 other states that we've argued. But you've just got to  
19 know where you're at and what is the law in where you're  
20 at because that's what you're going to be facing.

21 So, you know, I raise these three, along with  
22 the causation issue, for the purposes of just notifying  
23 opt-outs that these are not defenses that will prevent you  
24 from taking substantial money and getting the benefits in  
25 the 3M settlement.



1           **THE COURT:** What size were these districts that  
2 were required to test by the EPA some years ago?

3           **MR. SUMMY:** They were the larger ones. They  
4 made you test if you served more than 50,000 people. So  
5 they were the larger systems. And what happened is is  
6 that the EPA then took that data and said this is  
7 bothersome because there's a lot of detections here.

8           So that initiated the rule-making process under  
9 the Safe Drinking Water Act that we're finding today that  
10 led to PFAS being listed. At the time, you only had to  
11 test for PFOA and PFOS. So EPA was bothered by what they  
12 found in 2013 and 2015. So what they did is they said  
13 we're going to expand it. We're going to put it back into  
14 UCMR5 and not only make people who serve above 50,000  
15 test, we're going to make everyone who serves above 3300  
16 test. And then we're going to select 800 randoms that  
17 serve below that. And we're going to expand it to 29 PFAS  
18 chemicals instead of the two. So that's how that occurred  
19 and that's where that early testing is. It's the larger  
20 systems that detected it.

21           **THE COURT:** So, you know, obviously, you've now  
22 identified counsel who know who opted out districts  
23 serving customers of 50,000 or more, they probably need to  
24 consult their state statutes of limitation and repose  
25 because they may be staring down the barrel of a dismissal

1 motion even though they may on the facts have a great  
2 case.

3 **MR. SUMMY:** That is correct, Your Honor. And  
4 that's why we're raising it because we just want folks to  
5 know what you're signing up for by opting out versus how  
6 these don't apply to you if you're in.

7 The last feature I'm going to cover before I let  
8 the others speak, Your Honor, is the release. And I will  
9 say this is the most heavily negotiated section of the  
10 settlement. And it is one in which in the beginning 3M  
11 came in pounding the table and said, look, we are not  
12 going to pay billions of dollars to these systems without  
13 a complete release. When I mean complete release, that  
14 means anything that you could have pled in your lawsuit  
15 must be released.

16 And my co-leads can back me up on this, but  
17 myself and Mr. London and Mr. Napoli, we pushed back hard  
18 on this. And we said, that's not going to work. We know  
19 that there are other systems that are owned by these  
20 public entities, such as wastewater, storm water,  
21 airports, fire training facilities. We know some of those  
22 are going to have to be cleaned up. We know that some of  
23 them may be subject to regulation one day. We cannot let  
24 those go.

25 And what we did is we eventually agreed -- and

1 this was -- you know, this took many months to get through  
2 this process over this. And there are times where I truly  
3 felt like we're just not going to get there on this. And  
4 we eventually agreed through the assistance of the  
5 mediator and through the assistance of highly qualified  
6 counsel to draw the line at drinking water. We're going  
7 to release the drinking water, but we're going to carve  
8 out the non-drinking water aspects.

9 **THE COURT:** There are a number of objections  
10 claiming you did not do that?

11 **MR. SUMMY:** That is correct. And that's what  
12 I -- I want to talk about that because a couple of things.  
13 One is what the -- once this sort of came out, what the  
14 objectors -- most of the objectors, they come forward and  
15 they were pointing out, look, there could be all kinds of  
16 hypothetical situations where someone drinks the water,  
17 they excrete the water, which ends up in the wastewater  
18 system, and then the wastewater system discharges that or  
19 they discharge the biosolids somewhere else. And everyone  
20 was basically saying, look, water is all  
21 hydro-geologically connected. So they could just trace  
22 that back to drinking water. Because when you look at the  
23 release, it says -- the carve outs say that it's carved  
24 out if it's separate from and not related in any way to  
25 the public water system.

1           So they were pointing out, look, there's all  
2 kinds of sort of hypotheticals that you could -- they  
3 could say it's hydro-geologically connected. And when we  
4 were negotiating, we were not thinking like that. That's  
5 not something we were thinking about because we thought it  
6 was more clear. So once they pointed that out, we're  
7 like, you know what, let's make it clearer.

8           **THE COURT:** Got some guidance.

9           **MR. SUMMY:** That's right. So we went to 3M. We  
10 worked with them to come up with a joint interpretive  
11 guidance. I'm looking at it here. It was filed with the  
12 Court in November of last year. And what we basically  
13 said is we clarified what we all meant, which is that when  
14 we talk about separate from and not related to, we're  
15 talking about that it is separate from and not physically  
16 related to. What we were talking about is that the  
17 facility must be separate from the drinking water  
18 facility. The property, the airport, must be separate  
19 from the drinking water facility. And again, these are  
20 class counsels' interpretations of how these releases  
21 work. And we thought this interpretive guidance would  
22 really assist folks in understanding --

23           **THE COURT:** Then there was a complaint you  
24 didn't them give enough time, you amended the agreement --

25           **MR. SUMMY:** Right.

1           **THE COURT:** -- with the guidance.

2           **MR. SUMMY:** That's right. But we felt like the  
3 guidance would really help folks. And I think that I will  
4 say that the guidance has helped a lot of class members.  
5 A lot of class members have said to us that this is really  
6 good. I finally understand what was trying to be  
7 accomplished.

8           I will say there's other class members that want  
9 to hang on to, well, it could still be somewhat related,  
10 you know. So there are folks out there and there could be  
11 some folks that may have opted out for that reason, I'm  
12 not sure.

13           But we believe -- it's a difficult thing to do  
14 to draw these lines. It's not so easy. We even asked one  
15 set of objectors to come up with something different, and  
16 they couldn't really come up with anything either.

17           So we feel like this is a very good way to do  
18 it. We feel like it expresses the intent. And we feel  
19 like it does operate in a way in which drinking water is  
20 clearly it's released. But, thank goodness, everything's  
21 not released. The separate facilities, the separate  
22 property, the claims that arise from that are not  
23 released.

24           And I will say when you look at the Fourth  
25 Circuit law, when you look at the McAdams vs. Robinson

1 case, 2022; when you look at Berry vs. Shulman case, 2015;  
2 those cases were class action settlements that blessed  
3 broad releases. And what those releases actually say is  
4 is that the courts blessed those class actions even though  
5 the release was anything you could have pled. That is not  
6 this case. This case does not release everything that  
7 could have been pled. This case releases the drinking  
8 water aspect of the claim.

9 So we believe that the release is reasonable,  
10 fair, and adequate given these circumstances. And we  
11 believe that the interpretive guidance is very good on  
12 this issue and is an assistance to class members.

13 **THE COURT:** I thought the concerns raised did  
14 cry for an interpretive guidance.

15 **MR. SUMMY:** They did.

16 **THE COURT:** I knew what y'all were trying to do.  
17 But it could have been said, you know, that it highlighted  
18 some of the concerns. And the interpretive guidance, you  
19 know, isn't more than just a paragraph or two. It really  
20 set in an made y'all think more deeply. And of course,  
21 the parties are going to be bound by this interpretive  
22 guidance, you know, as part of this settlement agreement.

23 **MR. SUMMY:** Right. That is correct, Your Honor.

24 Your Honor, that concludes my remarks on the  
25 features. I'll let the others speak. And then I will be

1 back up to speak in the objection areas.

2 **THE COURT:** Very good.

3 Mr. Douglas, are you next?

4 **MR. DOUGLAS:** Yes, Your Honor.

5 Good morning, Your Honor. If it please the  
6 Court, counsel, friends, and colleagues, and everyone who  
7 has joined us here in the courtroom today?

8 When I woke up this morning I didn't plan to say  
9 what I'm about to say. But in realizing the significance  
10 of today and the historical nature of this settlement, I  
11 wanted to start off by saying and realizing how long we've  
12 been at this particular litigation and how far we've come  
13 from the first day, I am now 66 years old, Your Honor.  
14 I've been doing this for 36 years. I tried hundreds of  
15 cases in those 36 years. I've tried them all sizes,  
16 shapes, and variety.

17 From the very first day, and I think I've  
18 mentioned this to you before, the very first day I was  
19 sworn into the practice of law, that very afternoon I  
20 tried my first case and there's been no turning back  
21 since. I was that guy in the office that wanted to try  
22 anything and everything. And I didn't care if it was big,  
23 small, little, whatever. I would take the worst cases no  
24 matter what.

25 You know, some of the more experienced lawyers

1 would be happy to let me try some of those less likely to  
2 succeed cases. And I tried everything that I could get my  
3 hands on. I didn't care and I worked back to back to back  
4 for years and years. And I worked my way up the ladder,  
5 Your Honor. And I kept winning those so-called impossible  
6 cases til about the last 20 years when I was fortunate  
7 enough to start to try some significant cases in some of  
8 the most important bellwether cases in various areas in  
9 the last 20 years beginning with tobacco. It's kind of  
10 funny, I've come full circle. I used my very first  
11 tobacco trial, Ron Motley's deposition of Jeffrey Wigand,  
12 the famous insider, and there's been no turning back.

13           Since then, I've tried cases against the  
14 pharmaceutical industry, the chemical industry, the  
15 automobile industry in major bellwether cases, the first  
16 bellwether cases. And as you know, the first PFAS cases I  
17 was fortunate enough to be co-lead trial counsel. In the  
18 first three of those, the C-8 litigation before Judge  
19 Sargus in the Southern District Federal Court in Ohio,  
20 which is what I suppose led me to your door here and why  
21 I'm a part of this litigation, this PFAS litigation.

22           I wanted to say, with all that in mind, Your  
23 Honor, that it is the greatest honor of my career to be  
24 standing here before you right now in support of our  
25 request for final approval of what would be an historical



1 settlement and one which would benefit thousands of water  
2 providers, I'm proud to say, to be a part of that. It  
3 would address a public health issue, if not a crisis, of  
4 PFAS contamination in our nation's water supply, and help  
5 potentially millions of Americans.

6 And it's been an honor to be before you in  
7 particular, Your Honor. You've always kept us at the  
8 height of our game, so to speak, for the last four or five  
9 years. And it's been a long -- I've worked night and day  
10 for five years to be here.

11 My kids make fun of me. We worked through a  
12 pandemic, as you know. I locked myself in. Those 200  
13 depositions, Mr. Summy, I was --

14 **THE COURT:** Y'all wanted to go fly around the  
15 country to do them, and I told you you'd kill each other.

16 **MR. DOUGLAS:** We probably would have.

17 **THE COURT:** Suddenly we discovered we can do  
18 depositions remotely.

19 **MR. DOUGLAS:** It's one of the benefits, the  
20 silver lining of the pandemic. We learned we don't have  
21 to fly all across the country to get a lot accomplished.  
22 And we accomplished a lot.

23 And I basically locked myself in our family's  
24 dining room with a sign that my children took a picture  
25 of. On it was my handwriting, which is not the best, Zoom

1 In Progress. And it seemed to always been up at all  
2 times. And that's what will happen --

3 **THE COURT:** I ran a court from my dining room  
4 table. And the happiest moment of our marriage was when I  
5 came back to the courthouse.

6 **MR. DOUGLAS:** I'm sure my family was happy to  
7 get rid of me, too. And I say that because it speaks to  
8 the adequacy of which our team was prepared to negotiate  
9 what we believe is a fair, reasonable, and adequate  
10 settlement. And I'm going to speak to that, to those  
11 issues with respect to the requirements of a settlement  
12 like this be fair, reasonable, and adequate under Federal  
13 Rule 23 and the Jiffy Lube factors, which in particular  
14 pertain to the Fourth Circuit, and the four factors  
15 regarding fairness, the five factors regarding adequacy.  
16 I'm not going to speak to all of the Rule 23 requirements,  
17 Jiffy Lube factors. I know the Court is well acquainted  
18 with them. But I thought there were some that are worth  
19 highlighting here today, particularly with respect to our  
20 audience of potential opt-outs who hopefully will come  
21 back in, but as they speak to the fair, reasonable, and  
22 adequacy of the settlement.

23 And with that, if I could figure out how to work  
24 this, I believe I can, I want to start with addressing  
25 adequate representation, Rule 23(e)(2)A. And the

1 qualifications of counsel, which I'm -- I know you're  
2 already familiar with.

3 **THE COURT:** Y'all can move on from that one.  
4 That one's pretty obvious. I think counsel on both sides  
5 have just, you know, performed at the highest levels of  
6 professionalism.

7 **MR. DOUGLAS:** Well, that's kind of you to say  
8 so. But I just since I didn't want Mr. Summy to have to  
9 tout his own extraordinary skills and experience. So I  
10 thought I would chime in on that. But it is -- it has  
11 been an honor to work with counsel on both sides who are  
12 extraordinarily experienced and talented.

13 But the point is that counsel who negotiated the  
14 settlement possessed all of the relevant information,  
15 especially with respect to case values necessary to engage  
16 in a meaningful negotiation.

17 **THE COURT:** One of the criticisms is you didn't  
18 have a bellwether, how do you know the value of the case.

19 **MR. DOUGLAS:** As we've discussed, Your Honor, we  
20 went through a process, a very lengthy process of  
21 selecting a bellwether. Let's start with that.

22 So Mr. Summy mentioned that we had ten  
23 bellwethers. But even to get to the ten bellwethers, we  
24 looked at hundreds of cases. And we became intimately  
25 familiar with the facts and circumstances of the costs of

1 remediation for so many public water systems across the  
2 country to narrow it down to ten. And then to take the  
3 ten and narrow it down to the three, and then three to  
4 narrow it down to the one.

5 As you know, Your Honor, you directed that the  
6 City of Stuart be the first case to be tried as a  
7 representative bellwether. And as I've said before the  
8 Dupont hearing and as you probably gleaned over time, we  
9 spent night and day, day and night from September, I guess  
10 it was 2022 when you selected that case as the first case  
11 to go to trial, to prepare it. So we are -- so --

12 **THE COURT:** Y'all learned a lot when you just  
13 got down to the one case. There were a lot of turns and  
14 twists you had not anticipated.

15 **MR. DOUGLAS:** Yes. And I think it's helpful to  
16 discuss some of those. This is my famous pie chart, Your  
17 Honor. I brought it back.

18 **THE COURT:** More persuasive than the polar bear  
19 chart?

20 **MR. DOUGLAS:** The polar bear chart, we're going  
21 to leave that one to Mr. McWilliams. But as you know --  
22 and we did learn a lot.

23 I think this would be helpful since this was a  
24 case that the parties agreed was representative of the  
25 universe of cases. You know, it began with a chemical

1 fingerprinting analysis to determine the particular  
2 division, but product identification, PFOA that would be  
3 attributable to 3M. And as you know, that went through  
4 the whole Daubert process. And it involves a very  
5 expansive and very complex process to identify isomers,  
6 branched isomers, and to understand the ratio of branched  
7 to linear so you could identify exactly what portion of  
8 the contamination was attributable to each defendant.

9           And because this was -- and through that  
10 process, we learned that about 89 percent, about 89  
11 percent in the City of Stuart was attributable to 3M,  
12 between the PFOS and the PFOA that we identified could be  
13 attributable by using this fingerprint analysis, this  
14 B/L/T method, to identify what PFOA would have been  
15 manufactured by 3M.

16           So first of all, I would say it speaks to the  
17 overall equity in terms of what we learned from this  
18 particular case and the whole bellwether process. It  
19 speaks to the overall equity as between the Dupont and 3M  
20 settlement as to why 3M is so much larger in terms of the  
21 aggregate amount, about ten times the amount. And it's  
22 perfectly illustrated in this case, as Your Honor can see.  
23 It's around 89 percent, which is probably a little higher  
24 than what we think the market share is, but it's still  
25 within the realm of what's representative. So I think

1 this is a perfect illustration of the equity of the  
2 settlement as between Dupont and 3M.

3 But it also speaks to the adequacy of the 3M  
4 settlement itself. And I want to get into that a little  
5 bit because we did the analysis. And it's important to  
6 understand that counsel in the negotiation process were  
7 intimately aware of these facts. And it helped inform  
8 them so that they could engage in a meaningful negotiation  
9 as to values.

10 And as you know, with respect to this Stuart  
11 case, we calculated claimed damages for remediation of  
12 PFOS at about \$77 million. We had two experts who were  
13 going to testify as to the type of remediation it would  
14 require, the costs of that remediation. We had an  
15 economist project out what that would cost in terms of  
16 operation and maintenance going forward for decades. And  
17 that was about \$77 million.

18 And so following that through to its natural  
19 conclusion at trial, assuming full liability, which is a  
20 very big assumption because none of us have a crystal ball  
21 and can predict exactly what's going to happen, but  
22 assuming full liability by a trial verdict, if 3M was held  
23 fully responsible for their portion, which was 89 percent,  
24 that would mean 89 percent of 77 million, \$68 million.

25 And we went and applied the allocation model,

1 which involves the flow rates and the PFAS levels. We  
2 took the actual flow rates and PFAS levels from City of  
3 Stuart. And using the allocation model, that would  
4 generate about \$17 million from the 3M portion of  
5 settlement alone, which is well more than a fraction of  
6 the recovery assuming success at trial under the  
7 applicable law, which is the Flinn case as we've cited in  
8 our brief, a 1977 Fourth Circuit case.

9 But as Al Jolson said, you ain't seen nothing  
10 yet. That's just the beginning because it does not  
11 include Dupont, or the defendants, or other potential  
12 sources of settlement under -- of funding under the 3M  
13 settlement. And by that I mean, and Mr. Summy got into  
14 this a little bit, but the Stuart case is a perfect  
15 illustration of how well this particular provision, the  
16 special needs fund, works.

17 And if I -- if you may indulge me for a few  
18 minutes, I will explain how it would work in this  
19 hypothetical with respect to the City of Stuart. I say  
20 hypothetical, because as you know, Your Honor, the City of  
21 Stuart had their own private settlement. But we'll use it  
22 for illustration purposes.

23 So, first of all, the clause talks about ways in  
24 which -- captures expenses that many of our class members  
25 incurred that cannot be captured by the allocation model,

1 that cannot be captured by measuring flow rates, and  
2 scoring, and PFAS scores. And Mr. Summy got into some of  
3 those. And it's spelled out right here in the Allocation  
4 Procedure Section 5-B. And it talks about without  
5 limiting the possible actions. And the purpose of that  
6 language is because we cannot anticipate all of those  
7 circumstances, those unique circumstances, the many  
8 thousands of public water systems that may have incurred  
9 expenses in response to their PFAS problem that would not  
10 be captured under the allocation model. It couldn't be  
11 measured by a PFAS and flow rate score. Things like  
12 taking wells off line, reducing flow rates, drilling new  
13 wells, getting water from other sources, bottled water,  
14 while they look to find more permanent solutions to PFAS  
15 problems. Those kinds of problems aren't captured.

16 So to illustrate exactly how important this is,  
17 I want to remind the Court we had that -- if you'll  
18 recall, the unique circumstance in the City of Stuart  
19 where when they first encountered the PFAS problem in 2016  
20 and realized they were over the 70 parts per trillion  
21 advisory that had been issued at that time by EPA, their  
22 first reactions was, well, we're going to have to abandon  
23 our contaminated well, which if you recall was called the  
24 Surficial well, Your Honor. And they first looked to find  
25 a completely new source of water. And they looked to the



1 Floridan. I did pronounce that correctly, they do not say  
2 Floridian. They look to the Floridan Aquifer if you  
3 recall. And they began their plan A, which was to drill  
4 four wells into the Floridan, which they knew was not  
5 contaminated. And they were going to reply primarily --  
6 they were going to essentially abandon for the most part  
7 much of the contaminated Surficial and go to the Floridan  
8 at great expense.

9           When they realized that they had got through  
10 Phase One and drilled one well and had already committed  
11 to spending \$26 million, they realized that the ion  
12 exchange that they had temporarily, at the time believed  
13 was temporary, installed in the Surficial was going to be  
14 sufficient enough to provide clean water from the  
15 Surficial. And more importantly, that going to the  
16 Floridan would end up in the long run being far more  
17 expensive. So they stayed on the Surficial. So what do  
18 you do with that \$26 million that they've already spent  
19 and committed to spending? And this is the perfect  
20 example of how that would be captured in the 3M  
21 settlement.

22           And so they would be entitled, using this  
23 hypothetical, again it's a hypothetical because we know  
24 they already settled separately. This is a perfect  
25 example of the kinds of expenses that would not be lost,

1 that would be captured under this settlement and  
2 particularly this provision. And I thought the City of  
3 Stuart was a perfect example to illustrate just how great  
4 this particular clause and provision is.

5 Real quick, Your Honor, and I think this is --  
6 might be mostly what you'd like to hear from me since I  
7 have walked the walk and not just talked the talk on these  
8 cases. I've been in the trenches with defense counsel.  
9 They are highly competent defense counsel. This talks --  
10 this speaks to the issue of the strength of the parties'  
11 positions that we must consider when we consider  
12 settlement.

13 And while, as you know, we believe strongly in  
14 our case, and the evidence is strong, no one has a crystal  
15 ball and there is no guaranteed success. With that in  
16 mind, we also know that 3M had a number of very viable and  
17 strong defenses. And those include, believe it or not,  
18 product ID, notwithstanding the fact that we know that  
19 PFOS is essentially exclusive to 3M. Their defense was  
20 that there are other manufacturers. And you still have to  
21 go through that process of identifying what's in the  
22 water. And you still have to use that B/L/T method to  
23 identify that percentage of PFOA that can be attributable  
24 specifically to 3M. And as Mr. Summy just mentioned,  
25 there are many cases in which there is no PFOA or it's

1 50/50. In the case of City of Stuart, it was a majority  
2 of PFOS and a majority of 3M. That's not always the case.

3 So whether -- if you do not participate in this  
4 settlement, or if we did not engage in this settlement,  
5 all of these thousands of water providers would have to go  
6 through this very expensive process. And I can tell you,  
7 it's in the hundreds -- potentially the hundreds of  
8 thousands. It does depend on the size of the system. If  
9 you have five wells, it won't require as much sampling.  
10 If you have ten wells, 30, some systems have hundreds of  
11 wells. So you don't get a pass on product ID in a case  
12 against 3M.

13 The second defense is -- this is whereas Dupont  
14 had the defense of PFOA is ubiquitous and it's going to be  
15 hard to finger us, so to speak, and to identify our  
16 product, there's a critical difference between 3M and all  
17 of the other defendants, the so-called telomer defendants;  
18 and that is, as we briefly discussed before is that they  
19 phased out over two decades ago. And they phased out and  
20 they were going to argue that that is evidence of their  
21 good stewardship. And their argument was when we learned  
22 of the presence of PFOS in the blood of the general  
23 population, we did the responsible corporate thing and we  
24 announced the phase out. They did that in May of 2000.  
25 That's almost 24 years ago.

1           So in direct comparison to some of the telomer  
2 defendants, who I'll leave unnamed for now, who decided to  
3 do the opposite. In May of 2000, don't forget 3M  
4 announced we're getting out of the perfluorooctanal  
5 chemistry business, the C-8s, the PFOA, the PFOS. And  
6 what happened was that void was filled by a lot of those  
7 telomer makers, even though they were all warned, we were  
8 all warned that these perfluorooctanal chemistries may not  
9 be good for the environment. They may not be good for the  
10 general public. Yet other companies jumped in. So they  
11 were going to argue that they were the good corporate  
12 stewards. And they could make a very strong case about  
13 that.

14           Now, we know there was some dispute as to  
15 whether or not they really knew about the presence of PFOA  
16 or PFOS in the blood of the general population years  
17 before. We believe the evidence was strong and we were  
18 prepared to prove that at trial. Nonetheless, it is  
19 always a question of fact. And I don't think I have to  
20 digress into the whole die and tape story (phonetic). I  
21 know you're well familiar with that story.

22           But if a jury chose to believe that 3M didn't  
23 understand fully the extent of which the contamination was  
24 in the general population, then one could argue that they  
25 exercised good corporate stewardship in contrast to some

1 of these other defendants.

2 And I hate to mention the P word, punitive  
3 damages. But for those who think it would be a cake walk  
4 to get punitive damages, they should be cautioned to  
5 remember that 3M got out of the business 24 years ago.

6 **THE COURT:** Yeah, sometimes lawyers have this  
7 absolute romantic -- litigators, romantic belief in  
8 punitive damages. The number of cases that actually have  
9 an award of punitive damages that stick, I think it's less  
10 than one percent. And if -- I've always told lawyers,  
11 both when I was litigating and since I've been on the  
12 bench, if you're valuing your case on the basis of  
13 punitive damages, you're playing with fool's gold.  
14 There's just no way to know because these things are  
15 complicated. And the jury charge for punitives is not an  
16 easy charge. It is not easy for plaintiffs to overcome.

17 **MR. DOUGLAS:** And nor is the case law in terms  
18 of what is sustainable. I often say when I hear about  
19 these multi-billion dollar verdicts, it's not worth the  
20 verdict sheet it was written on. It's going to get  
21 overturned or reduced significantly.

22 But in this case, my point is, sir, that there  
23 was a very good argument that we would have to address.  
24 And should any lawyer be bold enough to try this, and I  
25 would warn folks not to try this at home, it's not an easy

1 case. They have a very good argument that they exercised  
2 good corporate stewardship. One we were prepared, make no  
3 mistake about it, to confront and expose, but that was  
4 going to be their argument.

5 And third -- one other point I should make here.  
6 It's likely, if you drill down to the science, that 3M's  
7 allocation overall contamination is probably going to  
8 decrease over time for the simple fact that they got  
9 out --

10 **THE COURT:** The telomer was later.

11 **MR. DOUGLAS:** Telomer was later. And just by  
12 the nature of the science, it leaches down into the  
13 aquifers later. It's not that -- it's a forever, it's not  
14 going anywhere. We do need to treat the 3M product. But  
15 the relative proportion is going to probably change over  
16 time.

17 And in that regard, I would caution folks don't  
18 strike while the iron is cold. The iron is hot right now.  
19 And this is the time to do it. And folks are going to  
20 find themselves, if they're unfortunate enough to opt-out,  
21 to get a trial six, seven, eight years from now, they're  
22 going to be looking at a very different landscape. And  
23 all of the problems that come, associated with proving a  
24 telomer case will be even greater to overcome.

25 And the third thing, as I mentioned in the

1 Dupont hearing, is the government contractor defense.  
2 Folks think that we won the government contractor. But  
3 the Court --

4 **THE COURT:** Factual dispute.

5 **MR. DOUGLAS:** It's a factual -- it's still a  
6 question of fact. And that's going to be especially  
7 problematic with a source of contamination are military  
8 sites. And I know that many of the opt-out cases, and  
9 many of the cases that are in are -- were contaminated,  
10 public water systems were contaminated from military  
11 sites. Therefore, the government contractor defense,  
12 which could have provided complete immunity for all the  
13 defendants, not just 3M by the way, that problem is going  
14 to be -- is going to exist.

15 And it's going to be even more problematic for  
16 those who have not only sued the private entities like 3M,  
17 Dupont, and the other manufacturers or part makers, but  
18 where you've sued the United States Government and you've  
19 caused, in essence, I will call double trouble. Because  
20 you have two hurdles to overcome. The government immunity  
21 defense the government is going to assess, and the Court  
22 has yet to rule on, and the government contractor defense.  
23 And so settlement absolves all of those problems. They  
24 all go away if you're part of this settlement.

25 And those are some of the factors that counsel

1 considered in negotiating -- into entering into this  
2 negotiation and in advocating this settlement, and some of  
3 the things that folks who have opted out should be  
4 thinking about, especially in these circumstances where --

5 **THE COURT:** Mr. Douglas, I am aware that of all  
6 the people who were disappointed when the case was  
7 settled, you were at the top of the list because you were  
8 prepared to try the greatest case of your life.

9 **MR. DOUGLAS:** As I said, Your Honor, it's the  
10 greatest case I never got to try.

11 **THE COURT:** Yes.

12 **MR. DOUGLAS:** And --

13 **THE COURT:** They kept you out of the discussions  
14 because they knew that you were a warrior. And I just  
15 think folks who are thinking about, oh, I can do better,  
16 you know, need to recognize you're like the only guy on  
17 the planet who has actually tried one of these cases as a  
18 plaintiff's lawyer.

19 **MR. DOUGLAS:** I could speak to that, Your Honor.  
20 And I think it would be helpful if I did so. But let me  
21 start by saying that so, yeah, I was -- they kept me away  
22 from negotiations. They wanted to keep me rabid and ready  
23 to fight. And I was. But my better angels told me that  
24 by far this was the path to take.

25 And so what we did, Your Honor, as I mentioned



1 at the Dupont hearing, is we had a negotiation team and a  
2 litigation team. And the negotiation team was led by  
3 Mr. Summy and his co-leads, Mr. Napoli and Mr. London.  
4 And we kind of -- and we had a litigation team that I  
5 headed up with a very, very talented team.

6 And while we were separate teams, we  
7 collectively referred to ourselves, as we mentioned in the  
8 brief, as the strike force. And we didn't practice in  
9 silos. We shared information, except for those things  
10 that were confidential to counsel negotiating couldn't  
11 share with us, in order to put our negotiating team in the  
12 strongest possible position, a position of strength and  
13 knowledge to negotiate.

14 So, yes, on the evening of June 4th, I was ready  
15 to go. And our team knew that we were ready to go. And  
16 when they negotiated this settlement, they were in the  
17 best possible and strongest possible position to settle  
18 this case.

19 So even though, to get back to your question  
20 about, well, there's been some criticism about there's  
21 been no bellwether, I could assure you, we could put that  
22 trial on right now. And we know everything about that  
23 trial. And it helped inform settlement counsel in terms  
24 of the result that was obtained.

25 **THE COURT:** Well, it's sometimes said that the

1 best settlement is on the day before trial, the result is  
2 the best the day before trial, not putting at risk adverse  
3 outcomes. And let me say, some of the same factors you  
4 pointed to as potential challenges, there were challenges  
5 for 3M on the other side. They had concerns, legitimate  
6 concerns. And nobody could predict how a jury, who we had  
7 not even selected, might respond to this conflicting  
8 evidence. And that's what prudent lawyers do is they work  
9 things out to eliminate the exposure all of them have for  
10 the disastrous outcome.

11 **MR. DOUGLAS:** You're exactly right.

12 **THE COURT:** You're buying insurance. A  
13 settlement is like purchasing an insurance policy.

14 **MR. DOUGLAS:** Absolutely. And just to address  
15 some of those issues of the uncertainty of trial -- and  
16 I'll wrap up in a few minutes. I know we've been going a  
17 while, Your Honor. But let me address some of those with  
18 respect to the Jiffy Lube factors and Factor 3, costs,  
19 risks, delay of trial and appeal. As you know, it took us  
20 five years to get to that -- four years to get -- it's  
21 five years now, but it took us four years. And it's not  
22 like we were all twiddling our thumbs. With had plenty to  
23 do. We took hundreds of depositions. We had motions.  
24 And it takes time to get a case to trial, especially one  
25 of this complexity.

1           **THE COURT:** Let me just say, if you folks want  
2 me to remand these cases to my 675 colleagues around the  
3 country, this will be on any of them the most complicated  
4 case on their docket. Okay?

5           **MS. HARROD:** There is an incredible learning  
6 curve that will be involved.

7           **THE COURT:** I'm very reluctant to impose on my  
8 colleagues what took us four years of intense study to get  
9 to. And then for the parties to litigate them all over  
10 the United States at great expense, I think you estimated  
11 in Dupont that it would take somewhere around \$2 million  
12 to prepare an individual case.

13           **MR. DOUGLAS:** Correct, Your Honor. And we've  
14 spent that money in the Stuart case. So we speak from  
15 authority. We have walked that walk. And I did that in  
16 the C-8 cases. And just to remind the Court, I tried the  
17 first C-8 case I think it was 2016? It all sort of blends  
18 together.

19                   Was it 2016?

20                   2015.

21           **THE COURT:** You lost a year.

22           **MR. DOUGLAS:** I lost a year. It all blends  
23 together. I had a wait another year to try the second  
24 case. Won that one as well. Almost another year to try  
25 the third case and won that as well. And it was not until

1 the fourth case, which by then I said I'm done, let  
2 somebody else try it, it settled in the middle of that  
3 fourth case. And as a cautionary tale, as I mentioned at  
4 the Dupont hearing, there was a case just to illustrate  
5 the length of time it would take --

6 **THE COURT:** A decade. It took a decade.

7 **MR. DOUGLAS:** It took a decade for the one case  
8 that was not part of the settlement. Took a verdict in  
9 2020. So it took me years after the settlement, the class  
10 settlement with the 3,000 members in the area of the  
11 Dupont plant in that case, to get to verdict. And it was  
12 only until about a couple of months ago, went through the  
13 entire appellate process, reached the Supreme Court until  
14 they finally got final resolution and the Supreme Court  
15 denied cert.

16 So that's what folks who are -- so meanwhile, I  
17 just think about -- and I feel for some of these opt-outs  
18 you know, who while we're in the middle of this settlement  
19 and they'll be on the outside looking in, seeing thousands  
20 and thousands of their fellow public water systems getting  
21 millions and millions of dollars to address the PFAS. And  
22 they're going to say to their lawyers, what happened?  
23 Where's my case? Where's my trial? This is seven years  
24 down the road, six years, eight years down the road and we  
25 have a PFAS problem that has not been remediated, or we

1 had to raise rates, and cause all kind of problems. It  
2 will be some lawyers are going to have to answer some  
3 tough questions from their clients. And I think I said  
4 something about maybe those lawyers need to make sure  
5 their malpractice premiums are paid up. That's how I  
6 personally feel about it.

7 And because it would take years, it would take  
8 decades to get to every case. Years, as you pointed out  
9 yourself, Your Honor, in your order of December 5th, that  
10 it could take up to a decade between the time which it's  
11 remanded, it goes to each individual original court of  
12 jurisdiction, go through their calendar. Appellate  
13 process could take a decade. And it did take a decade in  
14 case of that one party that did not participate in the C-8  
15 class settlement.

16 And then there are the significant costs of  
17 experts. It's millions. The appellate process. The  
18 length of each trial. And last on this issue on costs,  
19 risks, and delay is that there is a very limited universe  
20 of lawyers who know these cases well. And I look at some  
21 of these advertisements out there, other lawyers holding  
22 themselves out to be experts in the field of PFAS. And  
23 honestly, and to be blunt, I've never heard of them and  
24 I've been doing this for over a decade myself. And it  
25 just, it irks me and I feel bad for some of these class

1 members that should be in this class who are led to  
2 believe that they might have -- and that's not to say that  
3 I am the best trial lawyer in the world.

4 **THE COURT:** You're up there, Mr. Douglas.

5 **MR. DOUGLAS:** Well, I appreciate you saying so,  
6 Your Honor. But, you know, it's not to say that there  
7 aren't other competent lawyers that could do this. But I  
8 know two of them. Where is Mr. Bowden? I believe he's in  
9 the courtroom. He's the only one I -- he and I are the  
10 only two in this courtroom, and his partner Mike  
11 Papantonio, it's a very small universe who have actually  
12 walked this walk and know what -- I come from a place  
13 where I know what it's like to be in the trenches.

14 And defense counsel have the very, very best,  
15 the very, very best representation and they've had the  
16 very best. We've butted heads at times, as you know, Your  
17 Honor, with defense counsel over these years. But they're  
18 extraordinarily talented and they're very good.

19 And Beth Wilkinson and Bryan Stekloff, who were  
20 going to be their lead counsel, I've tried cases against  
21 them. They are some of the very best lawyers. So it's  
22 easy to sit here on the outside and say, well, I'll just  
23 get my trial. I'll opt-out and get a trial. And my  
24 lawyer says he's the leader in the field of PFAS. They  
25 published some kind of PFAS pamphlet or something. But

1 when it comes time to getting into the courtroom, there's  
2 not a lot of lawyers who know this stuff and have the  
3 institutional knowledge to do it. And I will tell you,  
4 I'm 66 years old. I'm about done. So I might not be  
5 available, putting all modesty aside.

6 And so those are some of the things that I'm  
7 speaking to some of the opt-outs. And we're fortunate  
8 that the Court has issued an order to extend the time for  
9 them to come back in. And these are some of the things  
10 that I think these opt-outs need to think about. It's  
11 that old saying, please do not try that at home. These  
12 are professionals. It's not an easy case in so many ways.

13 **THE COURT:** For the people who have not been in,  
14 preparing these cases for trial, and who are going to be  
15 coming in basically green, they're going to meet a 3M team  
16 that has -- is hardened by years of battle. They're ready  
17 to go.

18 **MR. DOUGLAS:** And they have been planning -- I  
19 don't want to say planning in any nefarious way. I don't  
20 mean it that way. But they have had years, they've had  
21 decades to think this through. So if you're just to the  
22 party now because you heard about a \$12.5 billion  
23 settlement, and you say, well, let's see what's going on  
24 with them. And let's put out a PFAS pamphlet and get some  
25 clients. It ain't that easy. These folks on the defense

1 side are some of the best lawyers, as I've said. And they  
2 have been planning their defense for decades and years. I  
3 mean, not necessarily in the litigation sense, but they  
4 know this subject matter better than you, than some of  
5 those lawyers do by any stretch of the imagination. It's  
6 no cake walk.

7 **THE COURT:** It's like walking into a bar and  
8 picking a fight with the biggest guy in the room.

9 **MR. DOUGLAS:** Probably worse than that.

10 **THE COURT:** He and his friends, right?

11 **MR. DOUGLAS:** He and his friends and then  
12 regretting it shortly thereafter.

13 And again, I think some of these water systems  
14 that remain out, that have opted out, remain out, will be  
15 looking from the outside in as their fellow other water  
16 systems by the thousands are receiving millions and  
17 millions of dollars and they're outside in the cold. And  
18 they should be thinking about that.

19 I want to just move it along, Your Honor, to  
20 Factor 5 of Jiffy Lube that talks about the degree of  
21 opposition. This is going to be my last factor I'll be  
22 talking about. And as you know, there are six remaining  
23 objectors which equates to about .05 percent. A degree of  
24 opposition is one of the factors, it's Factor 5 under  
25 Jiffy Lube. And if you think about .05 percent of class



1 members have made objections --

2 **THE COURT:** Yeah, but there's also a larger  
3 number, obviously, of opt-outs.

4 **MR. DOUGLAS:** Well, I am going to get to that  
5 next, Your Honor.

6 But so opt-outs and objections are a metric by  
7 which we can measure the degree of opposition and weighs  
8 so heavily in favor of settlement because the percent is  
9 so small with respect to objections but also small with  
10 respect to opt-outs. And water systems can opt-out for  
11 any number of reasons that are unique to them. But we do  
12 know that the majority of those opt-outs -- and the  
13 overwhelming majority of class members did not opt-out.  
14 That's just a fact. And the majority of those that did  
15 are what we call the Phase Two. In other words, they have  
16 no detection. They have no case. And many of them don't  
17 want to get involved. They say why should I get involved  
18 in this settlement?

19 **THE COURT:** What's the split between Phase One  
20 and Phase Two of the opt-outs? How does that split in  
21 terms of what percentage of them are in Phase One and  
22 which are -- what percentage are in Phase Two?

23 **MR. DOUGLAS:** I was told to be very careful  
24 about that, but it's two-thirds.

25 **MR. SUMMY:** Your Honor, it's about 68 percent of

1 Phase Twos, about 32 percent of Phase One.

2 **MR. DOUGLAS:** And so I think all of that, taken  
3 as a whole, between the paucity of objections relative to  
4 the size of the class, and the fact that the overwhelming  
5 majority have not opted out. And even for those that  
6 opted out, the majority, 68 percent to answer your  
7 question, have no case anyway, speaks very strongly and  
8 loudly in terms of the degree of opposition, which is  
9 virtually non-existent and, therefore, weighs heavily  
10 overall in the approval.

11 **THE COURT:** Mr. Douglas, I do think of this  
12 32 percent who have positive PFAS findings and who have  
13 opted out, I do think y'all need to inform them about  
14 those who have no likely 3M liability. I mean --

15 **MR. DOUGLAS:** I agree.

16 **THE COURT:** I think that is a really important  
17 matter. And unless you're really digging, you wouldn't  
18 know that. I mean, you've got to really get into the  
19 weeds to figure out. So if you -- now, you've got  
20 positive PFAS, you've got a potential contribution from  
21 3M. And if you opt-out, you get nothing. That is -- I  
22 think that borders on being reckless by the lawyers who do  
23 that. If they don't know that, that is a problem.

24 **MR. DOUGLAS:** And that's something that troubles  
25 me deeply, Your Honor. And I do think that we need to get

1 the message out. One of the reasons why I'm addressing  
2 some of these subjects today since we're in a public forum  
3 --

4 **THE COURT:** I think part of our audience here, I  
5 said this to my law clerk as I was walking in, I said, you  
6 know, the audience here are those who have opted out.  
7 This discussion is a great opportunity to learn, not just  
8 from the advocates of the plan, but those who have  
9 objections and to hear your exchange. I think that's a  
10 very valuable piece of information. But I mean, I was not  
11 aware that you had a significant, 25 percent apparently,  
12 it's a rough number that Mr. Summy reported.

13 **MR. DOUGLAS:** Right.

14 **THE COURT:** So if that happens to involve the  
15 32 percent who were in Phase One, you've got a quarter of  
16 them are walking away from free money.

17 **MR. DOUGLAS:** Free money. And it borders on  
18 irresponsible if, you know, if they do walk away without  
19 knowing that it -- you have to make informed decisions.  
20 And that's our obligation as lawyers. And lawyers should  
21 know the answer to those questions before they make a  
22 recommendation.

23 **THE COURT:** Right. If they're in Phase Two, you  
24 wouldn't know whether they got -- they will eventually if  
25 they, A, will they get a positive PFAS finding? And

1 secondly, will it be 3M? That's something you wouldn't  
2 have a way of knowing. You could be informed that  
3 25 percent don't. But, you know, the ones with the  
4 positive finding, you need to go determine, you know,  
5 what's our story? Because it is -- I don't think you can  
6 make an informed decision without knowing that.

7 **MR. DOUGLAS:** I completely agree, Your Honor.

8 **THE COURT:** Your due diligence should be before  
9 you walk your clients out, you ought to know, hey, I  
10 actually have a claim. And I think they also need to  
11 determine do they get tested in that earlier period? Is  
12 there a statute of limitations, statute of repose issue?  
13 And you're saying these are things you need to know  
14 because I think they have the potential of, you know, of  
15 just walking away from claims that are perhaps not very  
16 valuable for a sure -- literally a sure thing.

17 **MR. DOUGLAS:** And I agree. And to my point  
18 about, you know, some lawyers may have some tough  
19 questions to answer later on. If they don't --

20 **THE COURT:** Mr. Summy wants to tell us  
21 something.

22 **MR. SUMMY:** One this I just want to tell Your  
23 Honor, I want to correct something I said before. I said  
24 that the earlier testing was for folks who served 50,000  
25 or more, it was actually 10,000 or more.

1           **THE COURT:** So they --

2           **MR. SUMMY:** So there's a lot more folks that  
3 tested early. They just need to understand.

4           **THE COURT:** I mean, there may be reasons that  
5 people in good faith, well informed, can say I want to  
6 opt-out. They have their own strategic, very specific  
7 arguments and concerns that might make that a legitimate  
8 judgment call. But you've got to be informed.

9           **MR. SUMMY:** Right.

10          **THE COURT:** And you need to consider all the  
11 risks and all the benefits. And then you make the old  
12 bird -- is a bird in hand worth two in the bush? And the  
13 old -- another old adage, the enemy of the good is  
14 perfect.

15          **MR. SUMMY:** Right.

16          **MR. DOUGLAS:** Yeah.

17          **THE COURT:** Mr. Douglas, anything further?

18          **MR. DOUGLAS:** I think that's it unless Your  
19 Honor has any questions.

20          **THE COURT:** I'm good.

21                 Okay. Who is next from the plaintiffs side?

22          **MS. FEGAN:** I am, and I can be quick again.

23          **THE COURT:** Good, Ms. Fegan. We've got far too  
24 many suits here. We need a little more gender diversity.  
25 I've been wanting to do that in this MDL world. And we're

1 going to keep pushing that.

2 **MS. FEGAN:** Well, I'm happy to be here for that  
3 reason, Your Honor.

4 **THE COURT:** Good.

5 **MS. FEGAN:** Elizabeth Fegan for plaintiffs.  
6 Your Honor, Mr. Summy and Mr. Douglas have given us  
7 99 percent of the reasons why this final approval should  
8 be granted. But we can't get there without passing Rule  
9 23. And so I'm going to focus real briefly on Rule 23(a)  
10 and Rule 23(b)(3).

11 Your Honor, numerosity, I think we've had a lot  
12 of discussion. That's obviously satisfied.

13 Typicality is really important here. We have  
14 had class representatives, public water systems that have  
15 stood up on both Phase One and Phase Two in order to look  
16 at this settlement, ensure that their claims are  
17 representative of the class, and look at the settlement  
18 and determine that this makes sense in their respective  
19 phases.

20 Your Honor, we also lead counsel made sure that  
21 there were adequate -- adequacy both with respect to  
22 counsel and with respect to those clients. Structural  
23 protections were put in place to ensure that Phase One and  
24 Phase Two were represented both with respect to  
25 substantive fairness. As you heard Mr. Summy talk about

1 with the equalizer and ensuring equity on both sides, as  
2 well as an ensuring on the procedural fairness of the  
3 settlement.

4 And I think really critical here is that Rule 23  
5 was designed to cover commercial claims like this. These  
6 are claims that with information and obviously with  
7 informed consent, these public water systems can come in  
8 and understand and quantify their damages and quantify  
9 what this settlement means to them. And that makes  
10 predominant -- common issues predominate over any unique  
11 issues.

12 Finally, Your Honor, with respect to notice and  
13 due process, Ann Jung here (phonetic), as the notice  
14 provider, really put together in conjunction with class  
15 counsel a notice plan that far exceeds the gold standard  
16 or even the minimum standard for reach, but certainly is  
17 the gold standard for reach, reaching over 95 percent of  
18 the class with direct notice, supplemented by other types  
19 of notice such as publication notice. And, certainly,  
20 we've seen from the drum beat of hooves here a number of  
21 people that had comments and, ultimately, decided that  
22 with the different interpretive guidances that the  
23 settlement made sense for them, that we have satisfied due  
24 process.

25 **THE COURT:** I think a lot of these comments you

1 received have really helped with these interpretive  
2 guidances and they get a better agreement.

3 **MS. FEGAN:** I agree, Your Honor. And providing  
4 those interpretive guidances on the websites and ensuring  
5 that class counsel went out to different broad nationwide  
6 associations, local water associations, to make sure that  
7 public water systems had the information that they needed  
8 to make informed decisions was really critical.

9 So for those reasons, Your Honor, we ask that  
10 the class be certified and that the settlement be granted  
11 final approval.

12 **THE COURT:** Very good.

13 **MS. FEGAN:** Thank you.

14 **THE COURT:** Anyone else from the plaintiff?

15 **MR. SUMMY:** I think that's it for now, Your  
16 Honor.

17 **THE COURT:** How about the professor or is he at  
18 the end? At the end?

19 **MR. SUMMY:** Yes, that's at the end, Your Honor.

20 **THE COURT:** That's fine.

21 Okay. Mr. Bulger?

22 **MR. BULGER:** Thank you, Your Honor. Not  
23 surprisingly, we may not agree with every single statement  
24 that the plaintiffs made today. We may not agree with  
25 everything. But we do agree with the proposition that



1 this is a fair, reasonable, and adequate settlement. And  
2 we have nothing further to add at this time.

3 **THE COURT:** Well, Mr. Bulger, I'm a little  
4 anxious if there's something about that goes to the likely  
5 impact of this settlement, if there's a disagreement, I  
6 think this is the time to voice it. Because I think the  
7 parties here, including those who have opted out or may be  
8 considering to come in, they need to know that if there's  
9 a dispute here, what they're walking into. Because part  
10 of the settlement idea is that, you know, this is over.  
11 And if we're just starting another round of litigation,  
12 that may be a reason to opt-out.

13 **MR. BULGER:** Understood, Your Honor. And again,  
14 we have nothing further to add.

15 **THE COURT:** So there's nothing you can identify  
16 that specifically you disagree with with the plaintiffs in  
17 terms of their interpretation of the settlement agreement?

18 **MR. BULGER:** No, not as couched by Mr. Summy.

19 **THE COURT:** Very good. Thank you.

20 Mr. Douglas, they didn't agree with you.

21 **MR. DOUGLAS:** Your Honor, I was going to say  
22 something about how they're leadership today has  
23 demonstrated great stewardship. I don't think they would  
24 take in engaging in the settlement, I don't think you have  
25 any disagreement with that.

1           **MR. BULGER:** No, of course not.

2           **THE COURT:** Okay. Let me hear from the  
3 objectors from the City of Vancouver and Dupont,  
4 Washington.

5           Mr. Kray, good to see you again.

6           **MR. KRAY:** And you as well. Thank you for the  
7 opportunity to speak today. I'm here, Jeff Kray, on  
8 behalf of Marten Law. With me today is my partner,  
9 Jessica Ferrell. You may only hear from me today. It  
10 depends on what questions, if any, the Court has on the  
11 claims-over provision, which we'll talk about.

12           We're here on behalf of two entities that filed  
13 objections to the 3M settlement as proposed. And they are  
14 the City of Dupont and the City of Vancouver, Washington.  
15 We also represent 15 other entities that filed objections  
16 to the agreement. But we do not rise to speak for them  
17 today because due to concerns about that settlement, those  
18 entities exercised their opt-out rights. I think the  
19 Court is aware of the other 15. I won't go through the  
20 names unless it's useful to you.

21           **THE COURT:** No, I know them.

22           **MR. KRAY:** I do want to raise at the outset an  
23 objection to Mr. Douglas' reference to malpractice  
24 insurance. I think that's an inappropriate aspersion on  
25 public officers.

1           **THE COURT:** I tried to make the same point,  
2           which is that there may be good faith reasons to opt-out.  
3           They may be specific to your client that may be reasonable  
4           basis.

5           I think the point is, and I don't think this is  
6           necessarily focused on you or your firm, is that you need  
7           to exercise due diligence if you're going to opt-out. And  
8           there are critical pieces of information that you need to  
9           dig down into about like do I actually have a claim  
10          against this defendant? And is my claim expired? And  
11          issues that are fairly fundamental. Your firm's  
12          experienced. I'm confident you've looked at those issues.  
13          But there are some late show ups here that I have my  
14          doubts.

15          **MR. KRAY:** I appreciate that, Your Honor. And I  
16          appreciate your comments. I'm actually more concerned  
17          about my city attorneys that I represent and others and  
18          feeling that they are not -- they're being alleged not to  
19          have done their jobs. And my clients --

20          **THE COURT:** I don't know -- I wouldn't know -- I  
21          was a former city attorney. I normally would hand out to  
22          litigation counsel the jobs. So I don't think anybody's  
23          talking about them.

24          **MR. KRAY:** Well, I appreciate that. I will say  
25          that those city attorneys are directly involved in these

1 cases. And they do a fantastic job. And they're  
2 wonderful public servants. And I want to say that on the  
3 record.

4 The Cities of Vancouver --

5 **THE COURT:** Your clients are now happy.

6 **MR. KRAY:** I am. The Cities of Vancouver and  
7 Dupont have objected to aspects of the settlement  
8 agreement but have withdrawn their objections as to class  
9 certification and do not oppose approval of this  
10 settlement. I want to be clear on this point as well,  
11 Your Honor. I am speaking today on behalf of those two  
12 cities. They preserve their other written objections.  
13 And all of our other objector clients also preserve those  
14 objections, their written objections.

15 Rather, these cities object principally to the  
16 settlement terms that threaten to impair their rights to  
17 seek recovery for PFAS harms either to interests unrelated  
18 to public water systems or from other liable parties. And  
19 that will be a theme.

20 The cities are acutely aware that the settlement  
21 is but a piece of the puzzle necessary to bring needed  
22 funds to remove PFAS from our nation's water systems.  
23 They appreciate the opportunity to have access to those  
24 funds.

25 Their concerns about this settlement lie chiefly

1 with how it intersects with the challenging issues yet to  
2 come fully before this Court. We will be all back here  
3 again on those issues. And it is in our mutual interest  
4 to clearly define how this piece fits with the other  
5 pieces that coming over the horizon.

6 Vancouver and Dupont have proposed amendments  
7 that would address aspects of the settlement to improve it  
8 and a clear path for some public water systems to withdraw  
9 their request for exclusion.

10 Our complete objections have been fully briefed.  
11 We'll focus today on our primary proposed amendments and  
12 the reason why we think they're fair and appropriate.

13 First, the scope of the 3M release remains  
14 overbroad. 3M class counsel and class counsel state that  
15 the settlement is limited to drinking water. However,  
16 Section 11.1 extends the release beyond PFAS arising from  
17 drinking water in certain respects to include PFAS from  
18 other sources --

19 The best example that we can provide is  
20 biosolids, the non-liquid portion of our wastewater that  
21 is removed from the wastewater and then disposed to  
22 landfills, incinerated, or often recycled and reused in  
23 some fashion, including as fertilizer and agricultural and  
24 other settings. And I think we may hear further about  
25 this today from Broward County on this same point.

1           Biosolids are not derived from drinking water,  
2 but from the waste stream that results from water use by  
3 parties other than the public water system or a wastewater  
4 utility. Yet Section 11.1 sub 3 in the 3M settlement has  
5 settling public water systems releasing those claims for  
6 settlement allocation process that doesn't account for the  
7 value. It's just not built into the formula. Great  
8 formula, but it doesn't pick up this point that is part of  
9 the release. Because the formula only measures the value  
10 of the claim as associated with the drinking water  
11 portion, not all of the other things that enter the waste  
12 stream post the distribution of the drinking water.

13           **THE COURT:** Are you saying you can't bring a  
14 claim regarding PFAS in your drinking -- in your  
15 wastewater or in your waste system? You can't --

16           **MR. KRAY:** I am saying that even where  
17 physically separate, there are portions of the settlement  
18 agreement that still cause a release of those type of  
19 biosolids claims. There will still be an argument made  
20 that you have released those claims.

21           **THE COURT:** The plaintiffs have said that's not  
22 correct. I asked 3M do they dispute it? They didn't. So  
23 I'm wondering sort of why are we still arguing about it?  
24 They issued a guidance on it. They -- the -- they claim  
25 that's not correct. They've tried to address it and some

1 of it in response to your suggestions.

2 So, I mean, I'm wondering whether, you know --  
3 there's going to be no perfect settlement, right? You  
4 know that. You've been around this game long enough. And  
5 the question is, haven't they gone considerably towards  
6 solving this problem? Sure, could there be some, you  
7 know, odd set of circumstance that -- but, I mean, I'm  
8 hearing you, are you sort of telling me that a biosolid,  
9 they're going to argue, well, the biosolids came from  
10 something with the drinking water, so thus it's included?  
11 Is that basically what you're saying?

12 **MR. KRAY:** It is, Your Honor.

13 **THE COURT:** They say not. They say it's not.

14 **MR. KRAY:** I appreciate that. They may say that  
15 today, but their briefing doesn't say that. So the joint  
16 guidance was on November 29th. I agree, the joint  
17 guidance, very helpful, covered a lot of ground. But in  
18 class counsel's response to objections on January 9th, on  
19 Pages 21 and 22, they concede that the release continues  
20 to include damages to biosolids, wastewater, storm water  
21 on third-party property.

22 So, yes, it addresses the settling drinking  
23 water system, but these systems then cause these materials  
24 to be spread out through the community in ways that class  
25 counsel concedes are not released. And that's where the

1 over-breadth is. And that's where we have an opportunity  
2 over the course of the next month to continue talking,  
3 make some changes, address these further concerns, and  
4 give these other parties that are concerned about not  
5 opting back in a chance to do so if these are addressed.

6 And we concur with Broward County's points on  
7 this particular issue as well, Your Honor.

8 Second, we propose exempting the federal  
9 government from application of the claims-over clause.  
10 This would accord with the existing state exemption that  
11 is in the agreement, provided needed assurance to public  
12 water systems concerned about compromising their claims  
13 against the Department of Defense. Next thing coming up  
14 in line, Your Honor. And thereby remove a barrier to  
15 settling with 3M.

16 And third, we propose affirmatively clarifying  
17 that releasing parties only release as to related entities  
18 for whom they have legal authority to release. There's  
19 fuzzy language in that regard about relationships between  
20 parties that could be easily clarified by simply saying  
21 only those for whom you have legal authority to release.

22 We believe these requests are reasonable and  
23 consistent with the settlement's purpose and scope. They  
24 would not substantially diminish the protections afforded  
25 to 3M for drinking water settlement, but would improve the



1 agreement's fairness and therefore potentially increase  
2 participation.

3 We have shared with class counsel our proposed  
4 changes to the settlement agreement in red line format.  
5 On January 11th -- our January 11th letter that we sent to  
6 class counsel is referenced on Page 5 as Exhibit A of our  
7 January 16, 2024, reply in support of our objections. I  
8 do apologize, Your Honor. I realized last night that we  
9 actually failed to attach the exhibit. We corrected that  
10 this morning so the Court now does have the red line and  
11 can see the proposed changes that we've made.

12 We welcome any questions you may have.

13 **THE COURT:** I appreciate your contribution, your  
14 continuing to discuss these matters with the parties in  
15 the case.

16 **MR. KRAY:** Thank you, Your Honor.

17 **THE COURT:** Thank you, sir.

18 Let me hear from Broward County.

19 **MS. HARROD:** Good morning, Your Honor.

20 **THE COURT:** Good morning. Good to have you  
21 here.

22 **MS. HARROD:** Thank you. Thank you for having  
23 me. It's a pleasure to visit your city. We appreciate  
24 the opportunity to speak. Rene Harrod from Broward  
25 County, Your Honor.

1           Broward County supports this settlement, Your  
2 Honor. We appreciate the very hard work that this  
3 represents from all the counsel represented here before  
4 you today, Your Honor. However, we do suggest a few small  
5 tweaks to the settlement, Your Honor, detailed in our  
6 objections to better reflect the parties' expressed intent  
7 here today and to better protect the class members.

8           Your Honor, Broward County asserted five  
9 objections which are detailed in our filing. I'm going to  
10 take them out of order, starting with the easy ones (and  
11 work my way up to the hard ones.

12           Starting first, Your Honor, with our third  
13 objection. This regarded the disconnect between the  
14 amended Exhibit P in Section 11.1.5 of the settlement  
15 agreement. Counsel amended Exhibit P but didn't update  
16 those changes to 11.1.5. They caught it --

17           **THE COURT REPORTER:** I'm sorry. I didn't --

18           **MS. HARROD:** Update those changes to Section  
19 11.1.5. I noted that objection in our filing. They  
20 corrected it, Your Honor.

21           I point this out only to indicate and to remind  
22 Your Honor why they said in their filing they corrected  
23 it. They said to better reflect the intent of the  
24 settlement and to avoid any potential confusion about the  
25 governing language. Those same two rationales dictate a

1 few other changes as well, Your Honor.

2 For example, our fifth objection. Your Honor,  
3 this regards Section 11.4 where our releasing party, such  
4 as Broward County, is required to represent and warrant  
5 that any future additions, modifications, or improvements  
6 to its water system due to PFAS will be the sole  
7 responsibility of the releasing party and not the released  
8 parties. Your Honor, this is obviously incorrect. There  
9 are other defendants in this very action that arguably  
10 have liability for some of those costs.

11 Class counsel in their response confirmed the  
12 language is intended to be just vis-a-vis the releasing  
13 party and the released parties. But that's not what the  
14 language says, Your Honor. And this isn't just a contract  
15 obligation, this is a representation and warranty that  
16 Broward County has to make.

17 Your Honor, construed literally, as we have to  
18 with a written contract of that nature, every plaintiff  
19 would violate that representation and warranty on day one.  
20 Because we have contended and do continue to contend that  
21 other defendants are liable.

22 Just a few extra words, Your Honor, in the  
23 settlement agreement would resolve this concern to better  
24 reflect the intent of the parties as expressed here today  
25 and to avoid any potential confusion. We included those

1 extra one, two, three, four, five words in our objection,  
2 Your Honor.

3 Moving on, Your Honor, to our fourth objection.  
4 This regards the interplay between the definition of the  
5 term released -- pardon me, releasing parties and the  
6 protection against rate pairs (phonetic) in Section 11.4.  
7 The release guidance, which we very much appreciate,  
8 clarifies this does not -- the release does not affect PI  
9 claims. We appreciate that clarification. That goes a  
10 long way.

11 However, the remaining concern with 11.4 is that  
12 it requires that no releasing party ever assert that any  
13 future rate increase was attributable to 3M. Your Honor,  
14 under Florida law, where I come from, a single department  
15 director or a single elected county commissioner cannot  
16 bind Broward County without action by our Board of County  
17 Commissioners. But this provision in the settlement  
18 agreement, Section 11.4, permits a single department  
19 director or a single elected county commissioner to put  
20 the entire county in breach of the settlement agreement  
21 merely by saying that some future rate increase is  
22 attributable in some small part to 3M in some shape or  
23 form.

24 Once again, Your Honor, it's a simple fix. We  
25 proposed it in our objection. Just adding the words that

1 no releasing party shall be authorized by a class member  
2 to assert on behalf of that class member that any future  
3 rate increase is attributable to 3M.

4 Your Honor, turning to some of the harder ones,  
5 the last couple. Our second objection does deal with the  
6 reuse and the biosolids. The settlement agreement as  
7 written arguably requires release of those claims. Class  
8 counsel confirmed in their response that the claims are  
9 actually intentionally released, such that if Broward  
10 County was sued by a third-party for damages caused by  
11 distribution of reuse or biosolids on their property, we  
12 would arguably be unable to bring a cause of action  
13 against 3M for that.

14 Your Honor, that's a large unknown liability for  
15 a lot of potential class members. Thankfully, in Broward  
16 County, we have contractual provisions that protect us  
17 from that liability. But we do wish that it were  
18 authorized, Your Honor. We would much prefer it not be  
19 part of the release. But I realize that I can't win every  
20 battle. And as Your Honor said, perfect is sometimes the  
21 enemy of the good.

22 The last objection, Your Honor, that I would ask  
23 you to take under consideration though and do ask the  
24 parties to change in the situation is our first objection.  
25 And this is the issue about some of the migrating drinking

1 water. The issue is whether drinking water through a  
2 burst pipe or similar situation may have caused some tiny  
3 portion, however small, of additional PFAS-related damage  
4 to real property, storm water, or wastewater systems that  
5 are already tainted separately with PFAS.

6 To assert any of these three claims, real  
7 property, storm water, or wastewater under 11.1.3 or  
8 11.1.4.1, Broward County has to affirm that those claims  
9 do not, quote, arise out of, relate to, or involve PFAS  
10 that entered the drinking water system. That would mean  
11 that no class member could assert a real property claim,  
12 for example, if any of those damages, however minuscule,  
13 came from PFAS tainted drinking water.

14 Now, class counsel points to the release  
15 guidance and says that moots my concern. Your Honor, we  
16 appreciate the addition of the word physically where it  
17 was clarified in the release guidance, but that's not the  
18 issue. The issue is whether some small part of the claim,  
19 not whether the facilities are physically separated, but  
20 whether any small part of the claim, the damage to the  
21 real property, arises out of tainted drinking water.

22 They put the bandaid on the wrong spots, Your  
23 Honor. They put the bandaids on a little too high of  
24 Sections 11.1.2.1 and 11.1.2.2. And it needs to be a  
25 little three I of those sections, Your Honor.

1           We also need a second bandaid under similar  
2 sections, 11.1.3 and 11.1.4.1, both of which also require  
3 class members to affirm in the filing of our real property  
4 claim, which is not intended to be released here, that  
5 those claims don't arise out of, relate to, or involve be  
6 PFAS tainted drinking water.

7           Again, we've proposed simple fixes in our  
8 filing, Your Honor. And we would ask that those be  
9 adopted for the same reasons that the other objections  
10 were resolved by class counsel, to better reflect the  
11 intent of the parties in this settlement and to avoid any  
12 potential confusion about the governing language.

13           Again, Your Honor, we support this. We're a  
14 class member. We're a Phase One class member. And thank  
15 you for your time and counsel's time as well.

16           **THE COURT:** Thank you for your presentation.

17           Folks, I would like to take a break. I am going  
18 to kill my staff here if we keep going. And let's break  
19 til about 1:15. Okay? Because I want to hear, I know,  
20 Mr. Kray, you want to say something else?

21           **MR. KRAY:** I would like to make a clarification  
22 before you break.

23           **THE COURT:** Come on up for that. Because I want  
24 to hear -- I want to fully have the plaintiffs -- the  
25 parties have a chance to respond to these objections.

1           **MR. KRAY:** Thank you.

2           **THE COURT:** Certainly.

3           **MR. KRAY:** I want to make sure, there was a  
4 carefully crafted stipulation that was filed yesterday.  
5 It's Docket No. 4436. And the fourth bullet point on  
6 there we stand by. I didn't want anything I said today to  
7 seek to undermine our stipulation with regard to what that  
8 provision says.

9           **THE COURT:** I presumed you would live by your  
10 stipulation, Mr. Kray.

11          **MR. KRAY:** Thank you.

12          **THE COURT:** Thank you.

13                 Okay. Let's take a break. We'll be back here  
14 at 1:15.

15                 (WHEREUPON, a break was taken.)

16                 (WHEREUPON, court was called to order at 1:20 PM.)

17          **THE COURT:** Please be seated.

18                 We're missing Mr. Summy?

19          **MR. DOUGLAS:** He should be right out there.

20          **MR. LONDON:** If Mr. Napoli doesn't come back,  
21 then we might have a problem. (Pause.)

22          **THE COURT:** Okay. We're going to resume. And I  
23 would like to hear from class counsel concerning the  
24 objections.

25          **MR. SUMMY:** Thank you, Your Honor. Scott Summy



1 again for the record.

2 Your Honor, it was great to hear that the  
3 objectors that appeared here today are in support of the  
4 settlement but they have a few issues they wanted to  
5 address.

6 The primary issue I want to focus on raised by  
7 Mr. Kray and by Broward County deal with, you know,  
8 several hypothetical scenarios and this is the kind of  
9 thing that --

10 **THE COURT:** Are we talking about here when  
11 drinking water goes into wastewater and that circumstance?

12 **MR. SUMMY:** Yes.

13 **THE COURT:** Because as I understand it, as long  
14 as they're physically separated, it's not covered,  
15 correct, by the release?

16 **MR. SUMMY:** That is correct.

17 **THE COURT:** Okay. And I got the example of  
18 Ms. Harrod about a pipe.

19 **MR. SUMMY:** Right.

20 **THE COURT:** Okay. A pipe leaks of drinking  
21 water into wastewater. I must say, how anybody'd prove  
22 it, where it came from, would be just --

23 **MR. SUMMY:** Right. Right.

24 **THE COURT:** This is like dancing angels on top  
25 of a pinhead.

1           **MR. SUMMY:** Correct.

2           **THE COURT:** Think about all the ways in which  
3 PFAS might get into the wastewater.

4           **MR. SUMMY:** Correct.

5           **THE COURT:** I think the last place one would  
6 normally think about would be a leaking pipe from drinking  
7 water.

8           **MR. SUMMY:** Right.

9           **THE COURT:** But I get the point. And I can see  
10 why 3M would say that should be released. I get that.  
11 I'm just wondering about the practical meaning of that  
12 because that seems like a fairly remote method by which  
13 PFAS would get into wastewater or storm water.

14           **MR. SUMMY:** It's an extremely remote  
15 hypothetical. But there's also the argument that, well,  
16 and it's the one that I brought up earlier, where someone  
17 can make an argument that drinking water gets into  
18 wastewater by humans.

19           **THE COURT:** But that's been excluded.

20           **MR. SUMMY:** That's been excluded. And I will  
21 tell you --

22           **THE COURT:** And that was, by the way, something  
23 that needed to be clarified.

24           **MR. SUMMY:** It needed to be clarified. And I  
25 will say that Broward County raised another issue today,

1 which is, okay, so biosolids come out of the wastewater  
2 system. They're used on crops or on property or what have  
3 you. And then let's say that person, the property owner,  
4 sues the city because they sold them the fertilizer, or  
5 the biosolids, or they delivered it there. And when she  
6 suggested this change the first time, that brought about  
7 the interpretive guidance. I actually used that and 3M  
8 can attest to it.

9 **THE COURT:** She said you got the wrong I.

10 **MR. SUMMY:** Right. She said we have the wrong  
11 I. But you have 11.1, which lays out a broad release.  
12 And then 11.2 takes it away. And then the interpretive  
13 guidance, the one thing that I want to point out is is  
14 that Paragraph 2 not only takes it away but preserves your  
15 contribution and indemnity rights against 3M for that  
16 property owner. I made sure when we negotiated this that  
17 we put --

18 **THE COURT:** You need to explain that to me.

19 **MR. SUMMY:** Yes. Okay. So what happens is is  
20 you have the broad release. Then you have the carve outs,  
21 wastewater, storm water, as long as it's a separate  
22 facility. There are some facilities in America, not many,  
23 that are doing this toilet-to-tap situation.

24 **THE COURT:** I wouldn't want to drink any of that  
25 water.

1           **MR. SUMMY:** No, you would not. But if that's  
2 the same facility, that is released. But a separate  
3 physical facility is not released.

4           So let's say that a city sells biosolids to a  
5 farmer. And a farmer uses the biosolids as a fertilizer.  
6 Okay? But then he claims, well, it has PFAS in it. Let's  
7 say he sues the county or the city. The county or the  
8 city still has contribution and indemnity rights that flow  
9 from the carve out. I made sure when we negotiated this,  
10 I remember reading her objections, and when we went back  
11 to fix this, I said to 3M, you've got to put the  
12 contribution and indemnity rights back in for that  
13 scenario. So they did.

14           **THE COURT:** As unlikely as --

15           **MR. SUMMY:** As unlikely as it is, it's just that  
16 we didn't want people to be able to come in and argue,  
17 well, we could still be sued by this person even though  
18 it's coming from our wastewater. So I wanted to make sure  
19 that that got covered. So we put it into Paragraph 2 of  
20 the joint interpretive guidance that was filed after  
21 Broward County made their objections. But I want to give  
22 her credit for it. She helped me.

23           **THE COURT:** I thought her comments were really  
24 very interesting. I was following them.

25           **MR. SUMMY:** Right. She did help us understand

1 the issue better. And we did make this change to help  
2 address that.

3 Some of her other comments about what  
4 supervisors might say or not say, you know, those are  
5 tougher to change. Because, you know, there should be --  
6 if they're concerned about that, they're going to have to  
7 issue a policy and tell people not to talk about it. But  
8 it's hard to change that in a bigger context of things.

9 But the issues that they have raised clearly  
10 fall back on the --

11 **THE COURT:** I thought -- I can understand it  
12 because I represented governments. I can understand you  
13 could say, oh, my God, I can get my people sued for  
14 violating the non-disparagement clause.

15 **MR. SUMMY:** Right.

16 **THE COURT:** First of all, I have some trouble  
17 imagining 3M wasting the time --

18 **MR. SUMMY:** I do, too.

19 **THE COURT:** -- to do it. But, you know, it's  
20 one of those things you've got to say, okay, there is a  
21 risk. You know, it is. And you've just got to balance  
22 that against the benefits because they are parts of the  
23 settlement that aren't perfect. There are things that 3M  
24 has insisted upon which, you know, if you had your way,  
25 you wouldn't have had it in there.

1           **MR. SUMMY:** That is correct.

2           **THE COURT:** But I get why the company would want  
3 it in there.

4           **MR. SUMMY:** Right. Right. So, Your Honor,  
5 that's our response to those objections. I have a few  
6 more responses I'd like to make --

7           **THE COURT:** Please do.

8           **MR. SUMMY:** -- about just a few issues that  
9 Mr. Kray raised.

10          **THE COURT:** I hope y'all are talking.

11          **MR. SUMMY:** We are.

12          **THE COURT:** I mean, I really -- I've now been  
13 with Mr. Kray twice. And I'm kind of -- maybe I'm missing  
14 something here, but I think he's trying to say, you know,  
15 if y'all will work with me, I'm going to bring them back  
16 in.

17          **MR. SUMMY:** Right.

18          **THE COURT:** I'm kind of hearing him say that.

19          **MR. SUMMY:** Right.

20          **THE COURT:** And I hope both you and 3M are  
21 listening because there may be ways that are, you know, of  
22 clarification that may make him feel more comfortable but  
23 which don't do any real harm to anybody.

24          **MR. SUMMY:** Correct.

25          **THE COURT:** I was listening to a couple of those

1 and thinking about those.

2 **MR. SUMMY:** Right. And those discussions are  
3 ongoing. And, you know, some of it relates to whether or  
4 not, you know, folks really are going to come back in or  
5 is this an academic exercise. But those discussions are  
6 definitely going on.

7 But one of the things I wanted to cover is, you  
8 know, they keep coming back to the issue of -- they have  
9 cases against the federal government. And they don't like  
10 the claim-over provision.

11 **THE COURT:** Tell me about the claim over and its  
12 impact, how the claim-over provision would impact -- this  
13 was raised before by Mr. Kray. How the claim-over  
14 provision would potentially adversely affect the CERCLA  
15 claim down the road.

16 **MR. SUMMY:** So we don't think it does. What  
17 they're claiming is is that when they sue the federal  
18 government, federal government could bring 3M back in.  
19 Jury could put, or judge, could put more liability on 3M.  
20 And 3M says we've already paid. We're protected by the  
21 claim-over provision. That's, in effect, how that works.

22 However, we think that that's highly academic  
23 and not real practical. But we also believe that we've  
24 looked at this a little bit since the last hearing. And  
25 if you look at a case called ENSF vs. The United States,

1 it's a 2009 US Supreme Court case, the only way they can  
2 really bring in 3M is under what's called arranger  
3 liability.

4 Well, under the current state of the law that is  
5 not going to work, the federal government bringing them in  
6 for contribution. Because the only way you can be held  
7 liable as an arranger -- and usually the attempt at this  
8 is to sue a seller of the product like 3M. The only way  
9 this works is if the seller had a specific intent in  
10 selling the product to dispose of a hazardous waste. They  
11 were selling fire foam that they truly believed saved  
12 lives and was a useful product. The Supreme Court clearly  
13 said if it's a seller selling a useful product, no  
14 liability. The current state of the law is it's going to  
15 be very difficult for the federal government to bring in  
16 3M under arranger liability.

17 **THE COURT:** This is a third-party?

18 **MR. SUMMY:** It's a third-party claim.

19 **THE COURT:** So what you're talking about is and  
20 we're talking about primarily a CERCLA claim?

21 **MR. SUMMY:** Yes, I'm referring to a CERCLA  
22 claim.

23 **THE COURT:** Okay. So CERCLA claim isn't ripe  
24 yet because we haven't had these new regulations.

25 **MR. SUMMY:** That is correct. It's not in there



1 quite yet, but I think they're anticipating it's going to  
2 be in there.

3 **THE COURT:** And tell me how water districts may  
4 benefit from CERCLA, because I haven't gotten into that  
5 very much. Explain to me how that may be of some  
6 interest.

7 **MR. SUMMY:** This is such an interesting  
8 conversation because many of the water systems in many  
9 instances are contaminated by their own airport or their  
10 own fire training facility. So the CERCLA claim, they do  
11 not want to assert a CERCLA claim against themselves.

12 There is a bill that's pending before Congress  
13 now where some of the senators are trying to exempt  
14 airports, cities, and water providers from any CERCLA  
15 liability. And we're going to have to see how that plays  
16 out as legislation is making its way through.

17 But a lot of the CERCLA claims, unless it's  
18 against someone unrelated to the city, are not going to be  
19 made by the city because they could be suing themselves or  
20 a branch of themselves.

21 **THE COURT:** Of course, one of the dangers of  
22 this entire lawsuit is that everybody is suing everybody.

23 **MR. SUMMY:** That's correct.

24 **THE COURT:** And the MDL panel has been trying to  
25 avoid that so we don't just get a CERCLA firing squad.

1           **MR. SUMMY:** Correct. And that creates chaos.  
2           And one additional thing to note about the claim-over  
3           provisions that we've looked at is we took a deep dive on  
4           the law. There are 46 states that severely limit the  
5           ability to seek contribution against a settling party.

6           **THE COURT:** South Carolina is one of those  
7           states.

8           **MR. SUMMY:** Yes, and so is the State of  
9           Washington, which has a bar against contribution against a  
10          settling party which is -- the objection's being raised by  
11          Vancouver.

12          **THE COURT:** That's why all this noise about the  
13          claims-over provision, most contribution statutes prevent  
14          it anyway.

15          **MR. SUMMY:** They do. They absolutely do. So we  
16          wanted to make sure the record was complete with the law  
17          on these items because I don't believe the class members  
18          who are suing the federal government have a ton to worry  
19          about when it comes to the claim-over provision against  
20          the manufacturers of the product.

21          **THE COURT:** Well, there's much unknown, right,  
22          in the future?

23          **MR. SUMMY:** That's correct.

24          **THE COURT:** And at some point, you've got to  
25          make an educated judgment about your tolerance for risk.

1           **MR. SUMMY:** That's correct.

2           **THE COURT:** Right? I mean, that's what you have  
3 to do. There's no risk-free environment here.

4           **MR. SUMMY:** That's correct.

5           **THE COURT:** You can say I'm opting out and I'll  
6 catch up with 3M in my district court. And you may find  
7 out you're an unsecured creditor, right?

8           **MR. SUMMY:** That is correct.

9           **THE COURT:** I mean, so it's not a risk free --  
10 there's just no -- or you might have a statute of  
11 limitations problem. You might not even have 3M in your  
12 home water district. I mean, you know, it's just -- it is  
13 so much uncertainty out there that if you're looking for  
14 an island to anchor yourself, the only anchor I see, the  
15 only island I see is the settlement.

16           **MR. SUMMY:** That is correct.

17           **THE COURT:** Everything else is uncertain. And  
18 let me say, some of the these objectors and opt-outs, they  
19 may be right. I always feared in a complicated settlement  
20 that the risk was something we hadn't even thought about  
21 yet.

22           **MR. SUMMY:** Right.

23           **THE COURT:** That you wouldn't even see it  
24 coming.

25           **MR. SUMMY:** Correct.

1           **THE COURT:** Everybody worked on all these risks  
2 but it was the one we didn't think about that was actually  
3 the potential -- so there's just no way to do it all. You  
4 can sort it out. You can define exactly what your  
5 settlement agreement is. And at some point, you've got to  
6 say it isn't perfect. But are the imperfections too great  
7 for me to accept the settlement?

8           **MR. SUMMY:** Correct.

9           **THE COURT:** I mean, I think that's where  
10 everybody's got to end up.

11          **MR. SUMMY:** I think that's right, Your Honor.

12          **THE COURT:** One way or the other. Mr. Kray  
13 raised, I thought, a clear question about, you know, sort  
14 of the noise that somehow they'd be committing malpractice  
15 by doing this. You know, I think the ones who commit  
16 malpractice are the ones who don't do due diligence.

17          **MR. SUMMY:** I think that's right, Your Honor.

18          **THE COURT:** If you do due diligence, I can see a  
19 judgment. I'm not sure I'd reach the same conclusion, but  
20 I can see that reasonable people might say, particularly  
21 if they don't have any PFAS right now.

22          **MR. SUMMY:** Correct.

23          **THE COURT:** I can see them -- you know, Phase  
24 Two, I can see that.

25          **MR. SUMMY:** That's correct.

1           **THE COURT:** But Phase One is the one that gets  
2 me a little confused unless you've got a really strong  
3 argument. You've got money on the table.

4           **MR. SUMMY:** Right. And I think what Mr. Douglas  
5 was referring to is like you said, Your Honor, it's the  
6 lawyers who are not looking at, hey, can I even prove  
7 product ID? Hey, have I violated the statute of  
8 limitations already? Hey, do I have a statute of repose  
9 problem? It's that kind of thing. There are clearly  
10 lawyers that are involved here that have done due  
11 diligence, like Mr. Kray with his clients, and who have  
12 looked at it from these angles and have made a decision to  
13 opt-out. And that's fine. That's certainly within their  
14 right. But I think Mr. Douglas is talking about some of  
15 the others that have these issues.

16           **THE COURT:** Yeah. Mr. Kray in the Dupont  
17 settlement was describing the potential CERCLA claim and  
18 his concern about it.

19           **MR. SUMMY:** Correct.

20           **THE COURT:** And, you know, I've looked a little  
21 bit at it. I kind of wouldn't have had as much concern as  
22 he had. But I can't tell him he's free from that.

23           **MR. SUMMY:** That's correct.

24           **THE COURT:** I mean, you talk about any time  
25 you're litigating against the federal government gets

1 everyone sleepy really fast. Right? It's very  
2 complicated.

3 **MR. SUMMY:** That's correct. But, Your Honor,  
4 the long and short of it, at the end of the day, and I  
5 think this is -- we've talked about this. You've said it.  
6 Certainly, the Third Circuit in NFL Concussion has said  
7 it, which is you can't let the perfect be the enemy of the  
8 good.

9 And yes, this settlement is not perfect. But at  
10 the end of the day, it is awfully good. It really is and  
11 because of what it's going to do for class members and the  
12 people of this country. And it's creative. It's  
13 multi-faceted. Its timing is impeccable. And our belief  
14 is is that, yes, while it's going to help clean up the  
15 drinking water of America, the beneficiaries of this  
16 settlement are the individuals that live in this country  
17 whose public health will be impacted by the cleanup. And  
18 that is going to go on for generations. And it really is  
19 a settlement that is fair, reasonable, and adequate. I  
20 think we've portrayed that here today. We have done  
21 everything we know to do to protect these class members.  
22 And we think that this settlement should be approved  
23 consistent with our motion.

24 And with that, I will close. And I will let  
25 Mr. Klonoff make his comments and we'll be done from our

1 side.

2 **THE COURT:** Very good.

3 Professor, good to see you again.

4 **PROFESSOR KLONOFF:** Good to see you again, Your  
5 Honor. I am honored to offer my perspective in support of  
6 this settlement. I do so as someone who has focused  
7 almost exclusively on class actions in MDLs for the last  
8 35 years as an attorney, expert witness, teacher, and  
9 scholar. I've been involved in a number of high profile  
10 cases. And my responsibility for the three class action  
11 volumes of Wright and Miller gives me a unique historical  
12 perspective.

13 As I said last time in connection with Dupont,  
14 these are historic settlements, among a handful of the  
15 most significant settlements in history. What do I mean  
16 by historic? Earlier this week, I was discussing this  
17 very issue and this very case in my complex litigation  
18 class. Forty talented students who dream about a career  
19 in complex litigation, and we explored this precise  
20 question. We discussed the fact that most major  
21 settlements benefit a discrete group, not the broader  
22 public.

23 For example, the NFL Concussion case, which  
24 we've mentioned today, it benefited retired football  
25 players. Automobile defect cases benefit those who happen

1 to own the particular kind of vehicle. Securities fraud  
2 cases benefit individuals who own the particular stock.

3 This case is different. Yes, it benefits the  
4 thousands of class members here. But in reality, it  
5 benefits the entire country, many millions of individuals.

6 **THE COURT:** Because the class members serve the  
7 public.

8 **PROFESSOR KLONOFF:** Exactly. That is exactly  
9 right. And Your Honor, with all of my experience, I am  
10 not aware of another civil lawsuit that can boast a  
11 comparable impact.

12 **THE COURT:** Let me add this. You know, when  
13 this case started, this whole PFAS issue was like a  
14 footnote. People didn't really appreciate it. When the  
15 MDL panel called me to get involved, they had to explain  
16 to me what the issue was. I was like, what is this all  
17 about? If only they had told me 20,000 plaintiffs, I  
18 might have said I'm busy.

19 But, you know, the part of the beneficial  
20 effects of this lawsuit has been to inform the public and  
21 the public health people about the risks of this  
22 contamination, this toxicity. Plainly, it has informed  
23 the regulatory efforts to expand attention and regulation  
24 of this particular chemical. So it's not only has been to  
25 the benefit through the fact that American consumers



1 consume water, and the water they're going -- these  
2 settlement funds will go to remediation. It is they have  
3 informed. They have helped educate and inform the public  
4 about this problem. And to me that is, like, one of the  
5 highest callings of the law, which is to in its efforts to  
6 do justice is to do justice broadly.

7 **PROFESSOR KLONOFF:** You are absolutely right,  
8 Your Honor. This has been an incredible educational case  
9 for the public. And that is one of the many benefits of  
10 this litigation.

11 **THE COURT:** And let me say this. I'm sure some  
12 of the law partners of some of these plaintiff lawyers  
13 thought they had lost their minds. And \$20 million later,  
14 they probably really thought this thing better come out  
15 better. And it has. But, you know, they will reap the  
16 benefit of having done some real public good.

17 **PROFESSOR KLONOFF:** Exactly. There have been  
18 some objections and opt-outs here, but the numbers are  
19 small. Under the case law, this means that the  
20 overwhelming majority of class members approve the  
21 settlement, as they should.

22 In some settlements, such as small-dollar  
23 consumer cases, one could argue that the absence of  
24 objections or opt-outs may not mean that much. There is  
25 too little at stake, for example, to object or opt-out in

1 a consumer case because you believe you should get ten  
2 dollars instead of five dollars.

3 **THE COURT:** Or a dollar.

4 **PROFESSOR KLONOFF:** But in this multi-billion  
5 dollar settlement involving very sophisticated class  
6 members and lots of money at stake, the small number of  
7 objections and opt-outs is compelling. The objections  
8 that have been lodged focus mainly on the release. And I  
9 want to make two points in that regard.

10 First, having represented many Fortune 500  
11 companies in class action, I can attest that companies  
12 will not write big checks unless they get broad releases.  
13 This concept is often referred to as global peace. Not  
14 surprisingly, cases in the Fourth Circuit and elsewhere  
15 have approved releases much broader than those here,  
16 especially when the class is being well compensated.

17 Second, it is easy to object and say, sweeten  
18 the deal, make it better. But the reality is that the  
19 settlement process is not a blank check. Class counsel,  
20 with the capable assistance of the mediator, have  
21 negotiated the best possible deal. And it is simply  
22 unrealistic to believe that 3M will agree to any  
23 additional concessions.

24 **THE COURT:** You know, Professor, the major  
25 objection I heard, which I think contributes to a number

1 of the opt-outs, is that it isn't enough. You know?  
2 We've got big problems and this doesn't solve them a  
3 hundred percent. And we're going to go out and we're  
4 going to try to solve our problem. And to me, that's a  
5 little bit of a silo view of this. Because if someone had  
6 come in, and I know these two objectors didn't make these  
7 points, I would have asked, well, how much should it have  
8 been? If up to 12.5 billion isn't enough, what -- how  
9 much?

10 And then I would have asked, well, what is the  
11 capacity of this company to pay more? It's not like all  
12 the claims against 3M have expired. They're -- I'm right  
13 now working up the leach cases. They've got the other  
14 personal injury cases. We've got property claims. We've  
15 got sovereign claims. We've got things out there we've  
16 got to manage. So how much more do they anticipate could  
17 be obtained from this defendant before the defendant just  
18 throws the towel into the middle of the ring? I mean,  
19 really.

20 And, you know, it's easy to sit on the outside  
21 and say they should have done more. Right? But it  
22 reminds me of the old President Kennedy did a bullfight  
23 critics fill the stadium full but only the bullfighter  
24 faces the bull. Right? And, you know, these guys have  
25 faced the bull, you know. And they've made a judgment.

1     Could they have gotten a dollar more? I don't know. I  
2     always thought if I stuck around in a settlement for my  
3     last dollar was when I got greedy, what's the old line,  
4     pigs eat and hogs get eaten.

5             **PROFESSOR KLONOFF:** That is totally the reality.  
6     I mean, from my work on the defense side hearing clients  
7     say, look, I'm not giving a penny more, and we'll just  
8     litigate them one by one.

9             I mean, I am convinced from the process, from  
10    the quality of the lawyering on the both sides, from the  
11    mediator involvement that this is the best settlement.  
12    And the idea, sure, you can ask for more, but it's  
13    unrealistic.

14            And that really brings me to the next point  
15    about the opt-outs and the people who are thinking about  
16    coming back on board. We've talked a lot about that  
17    today. And I really think that's an important issue. And  
18    I really think the opt-outs who are thinking about coming  
19    back in should do so.

20            You don't want to go it alone against these well  
21    represented companies potentially for decades as we've  
22    pointed out. You don't want to face a host of defenses,  
23    such as statute of limitations and causations, defenses  
24    that do not apply to those who join the settlement.

25            So I really, really support the Court's comments

1 about the people who are thinking about opting out to  
2 really, really think hard about what they're giving up.  
3 This is an extraordinary settlement.

4 And I want to reiterate what I said last time  
5 about why this settlement came to be. I've mentioned the  
6 capable, diligent, and aggressive defense counsel. The  
7 vigorous, thorough, and creative class counsel. Frankly,  
8 some of the best I've ever worked with on the plaintiff's  
9 side. And I've worked with --

10 **THE COURT:** Don't butter them up too much.  
11 They've already got a pretty big head.

12 **PROFESSOR KLONOFF:** That is true. Top notch  
13 mediators and especially this Court, as I said last time,  
14 whose extraordinary management of this litigation was  
15 absolutely instrumental in achieving this settlement. And  
16 all of those points that I made last time apply equally to  
17 the 3M settlement.

18 I want to make one final thought. There is  
19 considerable cynicism in this country regarding our civil  
20 justice system. I hear it all the time. I heard it  
21 repeatedly during my six years of service on the federal  
22 civil rules committee. I hear it frequently from other  
23 law professors. And this cynicism is especially notable  
24 when I speak internationally, especially in Europe and  
25 Asia where US-style class actions are viewed with great

