

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

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG Case Management Order No. 5B This Order relates to ALL CASES
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**PROCEDURE FOR DEFENDANTS TO SHARE COSTS ASSOCIATED WITH PFS
PROCESSING, REVIEW, AND STORAGE**

1. Pursuant to Case Management Order No. 2, Paragraph 27, this Order sets forth the procedures by which the defendants in the above captioned matter shall share certain costs and expenses associated with processing, reviewing, and storing the Plaintiff Facts Sheets (“PFSs”), authorizations, and other documents served on Defendants’ Liaison Counsel in accordance with Case Management Order No. 5.¹

2. Nelson Mullins will receive the PFSs, authorizations, and related documents from plaintiffs’ counsel and distribute them to Litigation Management, Inc. (“LMI”) to upload into LMI’s review platform and database.

3. LMI will be the sole third-party vendor responsible for creating and administering the PFS deficiency review platform; uploading, imaging and Bates numbering the PFSs;

¹ This CMO applies to all defendants in the *In re: Aqueous Film-Forming Foams Products Liability Litigation* (“AFFF MDL”) except those defendants that are also plaintiffs in one or more cases included in the AFFF MDL. The defendants that are also plaintiffs shall notify Nelson Mullins Riley & Scarborough LLP (“Nelson Mullins”) of the cases in which it is a defendant by emailing AFFF.MDL.sites@nelsonmullins.com. After receiving such notice, Nelson Mullins will coordinate with LMI to provide these defendants with the PFSs, authorizations, and other documents for the cases identified.

uploading, imaging, and Bates numbering attachments to the PFSs; abstracting data from the PFSs and attachments; and conducting a first-level deficiency review of the PFSs.

4. Sharing of Costs and Expenses for LMI's Services:

A. Each defendant to which this CMO applies will pay its pro rata share of the cost per PFS for all PFSs that relate to a case where the defendant is named as a party.²

B. Each defendant to which this CMO applies will also pay its percentage share of the \$3 per GB per month hosting fee charged by LMI.³ The hosting fee will not be allocated by case, but instead allocated to each defendant based on the total percentage of PFSs applicable to that defendant.

5. If a defendant is dismissed from a case, its costs associated with the PFS(s) in that case will cease moving forward.

6. If a defendant is added to a case, that defendant will be responsible for its allocated costs associated with the PFS(s) in that case beginning on the date the defendant is added.

7. Because a defendant's costs will depend on the number of cases in which it is named as a defendant, each defendant must notify Nelson Mullins by emailing AFFF.MDL.sites@nelsonmullins.com when it is (1) added to a case after both the initial filing of the complaint and the date this CMO is entered, or (2) dismissed from a case while the case remains pending as to other defendants. If a defendant fails to notify Nelson Mullins that it has been

² Shared PFS costs shall include costs and expenses associated with creating and administering the PFS deficiency review platform; receiving, imaging and Bates numbering the PFSs and attachments; abstracting data from PFSs and attachments; storing the PFSs and attachments; and conducting an initial first-level deficiency review. Due to unique restrictions imposed by United States government, any United States government entities that are (or become) defendants will not be responsible for sharing costs associated with data abstraction or deficiency review.

³ In limited circumstances, multiple defendants under the same corporate umbrella may be viewed as a single defendant for purposes of calculating each defendants' pro rata share of the cost per PFS.

dismissed from a case, that defendant will continue to incur costs associated with the PFSs in that case until Nelson Mullins receives a notice of the dismissal.

8. To the extent additional defendants are added to the AFFF MDL after the date that this CMO is entered, each newly added defendant must notify Nelson Mullins that it has been added to the MDL by emailing AFFF.MDL.sites@nelsonmullins.com and provide a list of all cases in which it has been named as a defendant. Once a defendant has been added to the AFFF MDL, that defendant shall share responsibility for paying costs and expenses associated with processing, reviewing, and storing the PFSs, authorizations, and other documents as described in this Order.

9. LMI will allocate costs in accordance with the structure above and submit monthly invoices to each defendant (either hardcopy or electronic) with payment terms of Net 60.⁴ Each defendant shall be individually responsible for paying its invoices in accordance with LMI's terms of payment.

10. In order to access the PFSs in the LMI review platform and database, each defendant in the AFFF MDL, including new defendants added to the MDL, shall email Nelson Mullins at AFFF.MDL.sites@nelsonmullins.com and provide the name and email address of each person who the defendants wish to have access to the LMI database. LMI will then provide credentials allowing those defendants to view and download the PFSs and attachments.⁵

⁴ The United States government entities that are (or become) defendants in the AFFF MDL will enter into a separate contract with LMI to allocate costs.

⁵ In accordance with footnote 3, the United States government entities that are (or become) defendants in the AFFF MDL will gain access to the LMI database via their own independent contract(s) with LMI.

AND IT SO ORDERED.



Richard Mark Gergel
United States District Judge

March 17, 2020
Charleston, South Carolina