

**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. 2.B

**This Order relates to
ALL CASES**

1. This order amends Case Management Order (“CMO”) No. 2 to address mediation and the role of co-leads in mediation and settlement discussions. This CMO also appoints the Hon. Layn Phillips (ret.) to serve as a Court-appointed mediator to assist the parties.

2. CMO 2 vests the Plaintiffs’ Executive Committee (“PEC”) and Defendants’ Coordination Committee (“DCC”) each with the authority to “[e]xplore, develop and pursue all settlement options pertaining to any claim or counterclaim, or portion thereof, in any case filed in this litigation.” (Dkt. No. 48 ¶¶ 13(c)(iii), 27(i)(ii)).

3. This order modifies the above provisions of CMO 2 to the extent that the Court vests Plaintiffs’ Co-Lead Counsel and Defendants’ Co-Lead Counsel with exclusive authority to pursue, develop, explore, and advance potential settlements or otherwise exercise the prerogatives described in paragraphs 13(c)(iii) and 27(i)(ii) of CMO 2. Therefore, to the extent that a party seeks to negotiate independently, that party must first seek and obtain authority from its respective Co-Leads. If a party’s respective Co-Leads withhold consent, that party may move before this Court for permission to engage in such independent settlement negotiations.

4. If a party is granted leave by its Co-Leads to negotiate independently pursuant to paragraph 3 of this CMO, that party must keep its respective Co-Leads reasonably informed as to

the status of its negotiations.

APPOINTMENT OF MEDIATOR

5. The Court appoints the Hon. Layn Phillips (ret.) to serve as a Court-appointed mediator to assist the parties. Co-Lead Counsel for Plaintiffs and Defendants jointly agreed to this selection and the Court has independently reviewed the parties' request.

6. The Mediator will facilitate and encourage discussions among and between the parties as he deems necessary and appropriate, and as he may be directed by the Court. The Mediator will also provide confidential status reports to the Court on a frequent and timely basis. The Mediator shall have the power and authority to engage in *ex parte* communications with all parties and their designated counsel.

7. The process and procedures for mediation shall be established in the discretion of the Mediator, subject to any further directions from the Court.

8. No other provision of CMO No. 2 is amended.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

October 26, 2022
Charleston, South Carolina