

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DORIS BANKS, CANDY CAPORALE, )  
BRUCE DAVIS, GENE SULLENBERGER, )  
and CHRISTINE WOOTTEN, for themselves )  
and on behalf of all others similarly situated, )

Plaintiffs, )

v. )

C.A. No. 19-1672-MN-JLH

E.I. DU PONT DE NEMOURS AND )  
COMPANY, THE 3M COMPANY (f/k/a )  
Minnesota Mining and Manufacturing, Co.), )  
ATOTECH USA, LLC, MACDERMID, INC., )  
PROCINO PLATING, INC., a/k/a PROCINO )  
ENTERPRISES, a/k/a PROCINO, and BLADES )  
DEVELOPMENT LLC, )

Defendants. )

**REPORT AND ORDER TO SHOW CAUSE**

WHEREAS, this action was removed to this Court from the Superior Court of the State of Delaware pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) (D.I. 1);

WHEREAS, five of the defendants filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), briefing on those motions was complete as of August 3, 2020, and the motions are currently pending before the Court (D.I. 65, 67, 69, 71, 81);

WHEREAS, the Court has an independent duty to satisfy itself of the existence of subject matter jurisdiction;

WHEREAS, the Court has questions regarding the applicability of 28 U.S.C. § 1332(d)(3), (4) and finds that the resolution of such questions should occur before the Court assesses whether the First Amended Class Action Complaint states plausible claims for relief against the five moving defendants;

WHEREAS, the Court would like to afford the five moving defendants an opportunity to resubmit their motions to dismiss to address the circumstances as they exist after the Court has had the opportunity to address the issue of its own subject matter jurisdiction;

WHEREAS, the Court held a teleconference on February 3, 2021 to discuss the best way to proceed (D.I. 85);

NOW, THEREFORE, IT IS HEREBY ORDERED that the parties must show cause why the Court should not decline to exercise jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) and/or (d)(4).

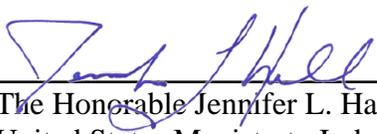
1. The parties shall submit briefs addressing the applicability of 28 U.S.C. § 1332(d)(3) and (d)(4) to this action. In addition to any other issues the parties wish to address, the briefing shall include the parties' positions on the following six issues:

- a. whether the exceptions set forth in § 1332(d)(4) are jurisdictional;
- b. whether the Court may, or must, consider *sua sponte* whether to decline jurisdiction under § 1332(d)(3) and/or (d)(4);
- c. if the Court does *sua sponte* consider whether to decline jurisdiction under § 1332(d)(3) and/or (d)(4), which party has the burden to establish that the statutory elements are, or are not, satisfied;
- d. whether the Court may apply a rebuttable presumption regarding the state citizenship of the proposed plaintiff class;
- e. whether the class proposed in the First Amended Class Action Complaint comprises only United States citizens; and
- f. whether § 1332(d)(4)(A)(ii) is satisfied.

As discussed during the February 3, 2021 teleconference, the parties shall meet and confer and submit a joint proposed briefing schedule on or before February 16, 2021.

2. The Court finds that the most prudent way to exercise its discretion and authority to manage the case schedule is to afford the five moving defendants an opportunity to resubmit their motions to dismiss after the Court addresses the question of subject matter jurisdiction. Accordingly, the pending motions to dismiss (D.I. 65, 67, 69, 71, 81) are denied with leave to renew within fourteen days after the Court rules on the applicability of § 1332(d). The moving defendants shall have the option to either refile their motions and briefs in substantially similar form or file new briefs (which may address the defendants' current positions, take into account changed circumstances, and/or cite intervening legal authority). Briefing shall be in accordance with the Court's local rules unless the parties agree otherwise. (For example, the parties may agree that the parties' previous briefs should be refiled simultaneously.)

Dated: February 3, 2021

  
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The Honorable Jennifer L. Hall  
United States Magistrate Judge