

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JACK W. LEACH, ET AL.,

Plaintiffs,

v.

CIVIL ACTION NO.: 01-C-608
(Judge George W. Hill)

E.I. DU PONT DE NEMOURS AND COMPANY,

Defendant.

**ORDER APPROVING FINAL SETTLEMENT
AND NOTICE PLAN AND FOR ENTRY OF FINAL JUDGMENT**

On February 28, 2005, counsel for both parties (the "Parties") appeared before this Court to seek approval of their Joint Motion for Order Approving Final Settlement and Notice Plan and for Entry of Final Judgment. Attached as Exhibit 1 to the Motion, the Parties presented for this Court's consideration a complete copy of the final settlement agreement between the Parties (hereinafter "Settlement"). The Parties also presented documentation of execution of Notice as approved by this Court in its November 24, 2004 Order. In addition, the Court heard testimony offered by the Parties in support of the allocation of the \$70 million payment under the Settlement, the Notice program, Requests for Exclusion and Requests for Water Analysis and related matters. After consideration of the Motion, with all exhibits, the entire record herein, including the Settlement, and after hearing counsel and testimony in open court, this Court hereby makes the following Findings of Fact, Conclusions of Law and Order:

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PAGE 367
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3-1-05 cc'd to all counsel listed.

I. Settlement

This Court has presided over this matter since it was transferred to this Court in December of 2001. In an Order dated April 10, 2002, this Court certified this matter as a class action pursuant to Rule 23(b)(1)(A) and 23(b)(2) of the West Virginia Rules of Civil Procedure and appointed two West Virginia law firms and one Ohio law firm as Class Counsel. Members of the Class Counsel team have extensive litigation and trial experience, including class action personal injury cases, as well as matters involving environmental contamination.

This matter is a complex case that includes claims for medical monitoring, personal injury, property damage, injunctive relief, attorneys' fees and punitive damages and involved sophisticated scientific and technical issues. The Court has presided over hearings addressing many of these scientific issues and is familiar with Plaintiffs' allegations and DuPont's defenses. Trial in this matter was scheduled to begin on October 12, 2004. Both parties anticipated a lengthy trial with several expert and fact witnesses to address these complex issues.

A. Plaintiffs Proposed Use of \$70 Million

As part of the Settlement, DuPont must pay \$70 million to the Class ("Settlement Amount"), of which \$20 million must be used for community health and education projects. The Court has reviewed the proposal by Plaintiffs for use of the Settlement Amount, which the Court understands to be as follows:

1. The \$70 million Settlement Amount will be deposited into one or more interest bearing account(s) approved by the Court, hereafter referred to as the "Settlement Fund." The Settlement Fund will be held and maintained by the Health Project Administrator as a Qualified

Settlement Fund pursuant to the provisions of Section 468B of the Internal Revenue Code. Robert G. Astorg, CPA, Managing Director, American Express Tax and Business Services, Inc. will serve as Health Project Administrator.

2. The Settlement Fund will be disbursed through the Health Project Administrator to pay for a Class health and education project ("Health Project"). The Health Project will include each Class Member, regardless of age or place of residence, who submits a valid proof of claim form (hereinafter "Proof of Claim form") to the Health Project Administrator establishing that he or she is a Class Member, as defined above (hereinafter referred to as "Health Project Participant"). The Proof of Claim form will include a confidential health questionnaire designed to obtain relevant health data from the Class that will be useful and beneficial to the Class. With the consent of the Health Project Participant, or his or her parent or guardian, the health data obtained on the Proof of Claim form, along with the results of the Blood Tests described in subparagraphs (3) and (4) below, will be submitted by the Health Project Administrator to the Science Panel for its consideration in making its determinations under the Settlement, subject to appropriate confidentiality protections.

3. The Health Project will pay each Health Project Participant the sum of \$150.00 from the Settlement Fund upon submission of his or her Proof of Claim form. Additionally, each Health Project Participant will be offered the opportunity to receive two separate blood tests to be paid for by the Health Project from the Settlement Fund. One blood test will be for the purpose of determining the levels of PFOA, PFOS, PFHS, and all available perfluoroalkanes from C5 to C12 in the Health Project Participant's blood ("Fluorocarbon Blood Test"). The second blood test will be for the purpose of determining whether or not the Health Project Participant's blood contains any

indication(s) of cancer or other disease(s) ("Diagnostic Blood Test"). Each Health Project Participant who elects to obtain the Fluorocarbon Blood Test and Diagnostic Blood Test (hereinafter referred to collectively as "Blood Tests") will be paid the additional sum of \$250.00 from the Settlement Fund immediately upon providing the required blood specimens.

4. The Diagnostic Blood Test will include the following, as appropriate for gender and age:

- a. Chemistry panel (35 Chemistries)
- b. C - Reactive Protein
- c. Complete Blood Count (including differential and blood count)
- d. Prostate Specific Antigen (PSA)
- e. Carcinogenic Embryonic Antigen (CEA)
- f. CA 125
- g. Alpha fetoprotein
- h. Thyroid hormone panel with T4, T3 and TSH
- i. Insulin level
- j. Growth hormone as reflected by Insulin like growth factor - 1 (ILGF1)
- k. Testosterone with free and total testosterone
- l. Estradiol
- m. Prolactin
- n. Immunoglobulins (IgE, IgA, IgG and IgM)
- o. ANA

5. The costs of obtaining the required blood specimens, completing the specified tests, and reporting the results of the Fluorocarbon Blood Test to each Health Project Participant is reasonably estimated to be \$210.00 per person. The cost of obtaining the required blood specimens, completing the specified tests, and reporting the results of the Diagnostic Blood Test to each Health Project Participant is reasonably estimated to be \$336.00 per person. Therefore, the combined monetary value provided to each Health Project Participant from the Blood Tests is reasonably estimated to be \$546.00 per person. In addition to the specific value, each Health Project Participant will receive the value of learning the results of the Blood Tests, and the Class will receive the benefit of generation of additional information for consideration by the Science Panel.

6. In addition to the monetary value of the Blood Tests paid from the Settlement Fund by the Health Project, each Health Project Participant who elects to obtain the Blood Tests will also receive combined cash payments from the Settlement Fund totaling \$400.00, as provided in subparagraph (3) above, for a combined aggregate value of \$946.00 per person.

7. It is anticipated that, due to the potential size of the Class, which could include as many as 80,000 persons, the Settlement Fund will be completely spent by the disbursements paid directly to or for the benefit of each Health Project Participant who elects to obtain the Blood Tests. In the event there are more requests for Blood Tests by Health Project Participants than the Settlement Fund can pay, then the Health Project will be terminated as soon as there is no money left in the Settlement Fund. In the event that any money remains in the Settlement Fund after all Health Project Participants receive their Blood Tests and cash payments, then all such remaining money will be distributed, per capita, by the Health Project Administrator to each Health Project Participant, unless the amount of the distribution would be less than \$10.00 per capita in which event all

remaining money in the Settlement Fund will be donated to the Good Samaritan Clinic in Parkersburg, West Virginia.¹ The Plaintiffs request that the Court find that the Health Project, as described above, is appropriate and reasonable, and approve the appointment of Robert G. Astorg as the Health Project Administrator.

The Court **FINDS** that this use of the Settlement Amount through the Health Project reasonably and adequately complies with the terms of the Settlement. The Court also **FINDS** this use of the Settlement Amount to be beneficial to the Class, as discussed in more detail below. The Court further **FINDS** that the appointment of Robert G. Astorg as Health Project Administrator is appropriate and reasonable.

B. Approval of Settlement

The Court has reviewed the record and the representations by Class Counsel as to the volume of analysis invested into this case at the time the Settlement was executed. In addition, the Court has considered the conclusions of Class Counsel with respect to the balancing of the risks of recovery, delay and costs that continued prosecution of the Lawsuit would entail, as well as the arguments by Class Counsel in favor of support of the Settlement.

The Court has also fully considered the benefits of the Settlement to the Class. The Court finds that this Settlement will provide necessary information about C-8 to address questions about the exposure of Class Members to C-8 and any effects that exposure may have. The Court also finds that the Class will benefit from C-8 water treatment, completion of a community health study, and an assessment by an independent Science Panel as to whether there is a Probable Link, as defined in the Settlement, between C-8 and human disease. The Class will also receive the

¹ Initially, this amount was \$25.00 but, after negotiations with counsel for objectors, the Plaintiffs agreed to an amount of \$10.00

immediate benefits of blood testing and compensation. The Court understands that many of the blood tests that will be available to Class Members through the Settlement are unique and expensive procedures that otherwise would not likely have been available. In addition, the Class will not need to wait for the uncertain outcome of a lengthy trial nor face the possibility of no recovery. In addition, the Court finds that the terms of the Settlement adequately addresses any claims by Class Members for personal injury or any entitlement by Class Members to medical monitoring in the event that the Science Panel finds a Probable Link, as defined in the Settlement, between C-8 and human disease.

After consideration of the foregoing, this Court **FINDS** that the Settlement, including the Health Project, is fair, reasonable, adequate, and in the best interests of the Class. The Court acknowledges that DuPont specifically denies any liability or wrongdoing relating to the matters in the lawsuit. The Court makes no new findings with respect to Plaintiffs' allegations in this lawsuit through this Order. The Court's conclusion with respect to approval of Settlement should not be construed as a comment on these allegations or a finding of liability on any matter.

II. Notice

In their Joint Motion for Preliminary Approval of Settlement, the Parties submitted to the Court a Notice program designed by the Garden City Group, Inc., as well as an affidavit from Wayne L. Pines in support of the Notice program. The Parties also requested that the Court appoint the Garden City Group, Inc. as Administrator to carry out duties set forth in the Settlement, including execution of the Notice program. In an Order dated November 24, 2004, the Court found that the Notice program satisfied Rule 23(C)(2) and (e) of the West Virginia

Rules of Civil Procedure and due process and constituted the best form of notice practicable in this case. In addition, the Court approved the form and content of Notice to be mailed and published and ordered that the Notice program be executed.

The Court finds that the Administrator caused to be mailed approximately 35,386 Court-approved Notices to potential class members, and of that set, only 2,660 were returned with no forwarding address as of February 22, 2005. The Court finds that counsel for the Parties provided materials to the Administrator to assist in the location of potential Class Members, including maps and statistics for the Public Water Districts, all available information to identify current and former Washington Works employees, and a list of all persons who signed retention agreements with Class Counsel or contacted Class Counsel to receive Notice. Also, the Administrator purchased publicly-available lists and directories for the geographic areas surrounding the Public Water Districts.

In addition, the Court finds that the Administrator caused to be published the Court-Appointed Notices in the following publications, including two publications with national circulation, on the dates indicated:

- a. The Parkersburg News (December 9, 14, and 19, 2004);
- b. The Parkersburg Sentinel (December 9 and 14, 2004);
- c. The Marietta Times (December 9 and 14, 2004);
- d. Point Pleasant Register (December 9 and 14, 2004);
- e. Pomeroy Sentinel (December 9 and 14, 2004);
- f. Gallipolis Daily Tribune (December 10 and 14, 2004);
- g. Gallipolis Sunday Times-Sentinel (December 19, 2004);

- h. Athens Messenger (December 9, 14, and 19, 2004);
- i. The Charleston Gazette (December 9 and 14, 2004);
- j. Charleston Daily Mail (December 9 and 14, 2004);
- k. Sunday Gazette Mail (December 19, 2004);
- l. The Columbus Dispatch (December 9, 14 and 19, 2004);
- m. Parade Magazine (January 2, 2005); and
- n. USA Weekend (January 2, 2005).

The Court has considered the distribution of these publications and the likelihood that this published Notice would reach Class Members. The Court also finds that the Administrator caused to be set up a toll-free telephone information line and a website. The Court acknowledges the number of contacts to the settlement website and call center. The Court also recognizes the hundreds of requests received directly by the Administrator for Notice, including many from outside the states of Ohio and West Virginia.

After considering the record, the Court **FINDS** that the Administrator carried out its duties under the Settlement and this Court's November 24th Order to execute the Notice program. The Court further **FINDS** that the Notice program in this matter satisfied Rule 23(c)(2) and (e) of the West Virginia Rules of Civil Procedure and due process and constituted the best notice practicable.

III. Requests for Exclusion

The Administrator presented the Court with copies of all written Requests for Exclusion received through February 22, 2005. The Court **FINDS** that of these 66 requests, 19 people self-

identified as DuPont employees. The Court notes that the number of Requests for Exclusion is not sufficient to trigger the provisions in Section 2.1.4 of the Settlement. The Court also notes that neither Party objects to the Court granting these Requests for Exclusion.

IV. Water Analysis

Pursuant to Section 2.1.1 of the Settlement, individuals with Eligible Private Sources within the geographic boundaries of the Public Water Districts set forth in Schedule 2.1.1(A) of the Settlement or the wells set forth in Schedule 2.1.1(B) and used as their primary source of drinking water could request that their well be analyzed by DuPont to determine if they are members of the class. Testing of Eligible Water Sources has been ongoing and will continue until all eligible requests received through February 25, 2005 are completed.

Based on the foregoing, the Court **FINDS** that DuPont is not obligated to process requests for water testing received after February 25, 2005 under Section 2.1.1 of the Settlement, and that DuPont has satisfied its obligations for water analysis under Section 2.1.1 of the Settlement when all requests for testing of wells eligible under that Section and received before February 25, 2005, are completed.

V. Disposition of Claims

As stated above, this matter involves claims of medical monitoring, personal injury, property damage, injunctive relief, attorneys' fees and punitive damages. The Court finds that these claims can and should be segregated for disposition in the manner set forth in Sections 3.2 and 3.3 of the Settlement, which set forth and define the Initial Released Claims and Conditionally Released Claims. The claims in this case are separable because there is more than

one possible recovery for each. In addition, the Court finds that delay of final resolution of the Initial Released Claims pending determination of the Science Panel as to whether a Probable Link exists between C-8 and Human Disease would unnecessarily suspend the benefits to the Class of the Settlement. There are no remaining issues to be litigated in this matter, as the Settlement sets forth adequately the agreed upon mechanism to determine whether the Conditionally Released Claims will be dismissed by this Court or whether some Class Members may pursue individual claims against DuPont. Moreover, the Court's conclusions as to the adequacy of representation of Class Counsel, the adequacy of Notice and the fairness of the Settlement do not depend upon the outcome of the Science Panel.

Accordingly, pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, the Court expressly certifies and determines that there is no just reason for delay and expressly directs entry of judgment as aforesaid.

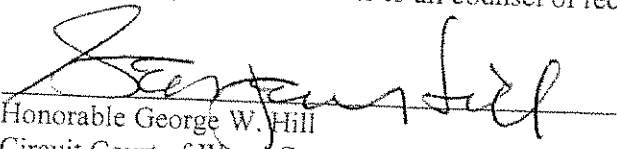
Based upon the foregoing, it is, therefore, hereby accordingly **ORDERED, ADJUDGED AND DECREED** that:

A. the Class is certified as those individuals: (1) who for the period of at least one year up to and including December 3, 2004, consumed drinking water containing .05 ppb or greater of C-8 attributable to releases from Washington Works from (a) any of six specified Public Water Districts (each as more particularly described in Schedule 2.1.1(A) of the Settlement), (b) any Eligible Private Source within the geographic boundaries of the Public Water Districts that is the individual's sole source of drinking water at that location or (c) any Eligible Private Source more particularly described in Schedule 2.1.1(B) attached to the Settlement that was the individual's sole source of drinking water at that location; and (2) who

- (a) did not exercise their right to Opt Out of the Certified Class or (b) have not elected to waive their rights as a Class Member through execution of a Notice of Clarification Regarding Class Member Status filed with the Court in the Lawsuit;
- B. the Settlement, including the Health Project, is approved by this Court as fair, reasonable, adequate and in the best interests of the Class;
- C. Robert G. Astorg is approved and appointed by this Court as Health Project Administrator;
- D. the Notice program as carried out satisfies due process and the requirements of Rule 23(c)(2) and (e) of the West Virginia Rules of Civil Procedure;
- E. the Requests for Exclusion described in Section III of this Order are granted and these individuals are excluded from the Class;
- F. all Initially Released Claims set forth in Section 3.2 of the Settlement are **DISMISSED** with prejudice;
- F. all Conditionally Released Claims set forth in Section 3.3 of the Settlement will be **DISMISSED** if, and only if, all conditions for release of such claims set forth in Section 3.3 of the Settlement are met; and
- G. this Judgment and Order in this matter is a final determination by this Court with respect to all matters set forth in this Order, and this matter is ended subject to retention of jurisdiction by this Court over this matter in accordance with Section 14.2 of the Settlement.

IT IS SO ORDERED this 28th day of Feb., 2005.

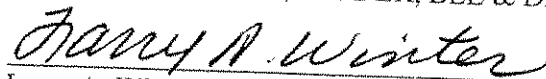
The Clerk is directed to provide certified copies of this Order to all counsel of record.


Honorable George W. Hill
Circuit Court of Wood County, West Virginia

PRESENTED BY:

NAMED PLAINTIFFS

By HILL, PETERSON, CARPER, BEE & DEITZLER, PLLC


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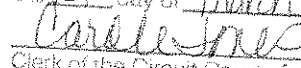
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AND

STATE OF WEST VIRGINIA
COUNTY OF WOOD. TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 28th day of Feb., 2005, as fully as the same appears to me of record.

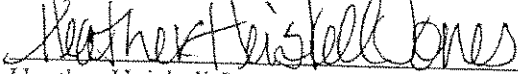
Given under my hand and seal of said Circuit Court, this the 01 day of March, 2005.


Clerk of the Circuit Court of
Wood County, West Virginia

By: , Deputy

E. I. DU PONT DE NEMOURS AND COMPANY

By SPILMAN, THOMAS & BATTLE, PLLC



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