

1 IN THE CIRCUIT COURT OF WOOD COUNTY
2 WEST VIRGINIA

3 JACK W. LEACH, ET AL.,

4 Plaintiffs,

5 v.

Civil Action
No. 01-C-608

6 E.I. DUPONT DE NEMOURS AND COMPANY,

7 Defendant.
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12 Proceedings had in the above-styled matter,
13 before the Honorable George W. Hill, beginning
14 at 9:30 a.m. on the 28th day of February, 2005,
in the Wood County Judicial Building,
Parkersburg, West Virginia.
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1 February 28, 2005

2 THE COURT: Good morning, everyone. I
3 apologize for two things: One, the size of
4 the courtroom for an event like this is
5 rather small. And another, the heat, of
6 course, which I don't know what we can do
7 about it. We're going to try to do
8 something about that. It probably won't get
9 ameliorated until after this hearing is
10 over.

11 Mr. Deitzler, who wishes to speak?

12 MR. DEITZLER: Your Honor, I'm Harry
13 Deitzler representing the plaintiffs, along
14 with Rob Bilott, who you have met before,
15 Larry Winter, who of met before, and Ed
16 Hill, who you have met before.

17 THE COURT: All right.

18 MR. DEITZLER: I'll speak for the
19 plaintiffs.

20 THE COURT: All right.

21 MR. JANSSEN: Your Honor, Larry Janssen
22 for DuPont, together with my colleague, or
23 my colleagues, Libretta Stennes and Heather
24 Heiskell Jones.

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1 THE COURT: Thank you. Now you wish to
2 start off?

3 MR. DEITZLER: Yes, Your Honor. Judge,
4 we're here on the motion which has been
5 presented to the Court for final approval of

6 the settlement in the class action styled
7 Jack Leach, Et Al v. E.I. DuPont de
8 Nemours.

9 we previously had a preliminary approval
10 hearing on November 23rd of last year, at
11 which time this hearing was scheduled. At
12 that hearing, I recapped the nature of the
13 motions so I'll just do it briefly here at
14 this point.

15 The lawsuit was filed August 30, 2001.
16 It was originally including Lubeck PSD,
17 Lubeck PSD settled out on January 16,
18 2003. The litigation has lasted for over
19 three years with regard to DuPont.

20 we have litigated issues in front of the
21 West Virginia Supreme Court, as well as in
22 front of this Court, and on May 9, 2003, you
23 entered an order telling us to mediate, and
24 we followed that order and we selected

8

1 jointly two mediators and we began the
2 mediation process during the time of
3 litigation. In other words, the litigation
4 continued to proceed while the mediation
5 occurred.

6 The mediation occurred in multiple
7 cities over multiple months, culminating in
8 an agreement in principle of September 4,
9 2004, at Boston, Massachusetts, which we
10 presented to you in final form on November
11 23rd.

12 We have undertaken extensive
13 investigation into the facts. We have
14 engaged in extensive discovery from DuPont,
15 including over 300 requests for admission
16 and depositions. We have reviewed and
17 analyzed in excess of a million and a half
18 pages of documents, either obtained from
19 DuPont, Lubeck Public Service District or
20 other publicly available sources.

21 We have taken 35 depositions over three
22 years and retained professionals in the
23 fields of toxicology, epidemiology,
24 chemistry and medicine.

9

1 As a result of the investigation which
2 we conducted, we concluded that the
3 settlement of the claims which we have
4 presented to the Court is in the best
5 interests of the class and each member of
6 the class and in the best interests of all
7 parties concerned.

8 We recognize the expense and length of
9 time that the proceedings necessary to
10 continue the lawsuit would have taken,
11 including the appeals. We have considered
12 problems of proof, possibility of
13 modification to the law which sometimes
14 occurs mid litigation. We believe that the
15 certainty and the amounts of recovery,
16 combined with the benefits of providing C8
17 water treatment to the effected human

18 drinking areas and the community health
19 study, along with our community health
20 project, which will answer the questions
21 once and for all of what does C8 do or not
22 do to human beings who are exposed to it, we
23 believe those things outweigh any possible
24 benefit of continuing the litigation and

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10

1 having the matter decide by a jury as
2 opposed to by settlement.

3 So we have before the Court the motion
4 for Approval, and in support of that motion,
5 we have some evidence to present so that the
6 Court and all the class members who are
7 interested and concerned will know exactly
8 what we're proposing. And in that regard,
9 the first presentation will be Mr. Janssen
10 will have someone from the Garden City
11 Group, who presented the notice to the
12 class, so that we have on the record the
13 exactly what was done with regard to
14 notifying the potential class members.

15 THE COURT: Mr. Janssen?

16 MR. JANSSEN: Yes, Your Honor, if the
17 Court please, would Mr. Wayne Pines please
18 come forward and be sworn.

19 (Witness, WAYNE PINES, sworn.)

20 DIRECT EXAMINATION

21 BY MR. JANSSEN:

22 Q. Mr. Pines, state your full name for the
23 record, please.

24 A. Yes, my name is Wayne pines, P-I-N-E-S.

□

11

1 Q. Where do you live?

2 A. I live in Chevy Chase, Maryland.

3 Q. What is your current employment?

4 A. I am the Executive Vice-president of GCG

5 Communications, which is a division of the

6 Garden City Group.

7 GCG Communications is located in Reston,

8 Virginia, the Garden City Group is located in

9 Melville, New York and is a class action

10 administrator.

11 My role is to provide the notice when

12 there is a class action so that members of the

13 class will be notified about the settlement.

14 Q. In a nutshell then, the Garden City

15 Group was charged with the responsibility of

16 providing notice to class members in this case?

17 A. That is correct.

18 Q. How long have you held your position at

19 Garden City?

20 A. I have been at Garden City Group since

21 1996. I have been doing notice programs since

22 1984.

23 Q. When you say that you've been doing

24 notice programs, would you elaborate a bit on

□

12

1 that?

2 A. Well, notice programs are intended to

3 reach particular members of a class so that they

4 will have information that they need in order to
5 decide whether they want to remain a member of
6 the class; and secondly, how to receive
7 benefits, and what we do is we evaluate, in each
8 particular instance, the class, how it receives
9 information, where the class members are
10 physically located, and then we custom design a
11 program for that particular case.

12 Q. How many notice programs have you
13 designed and implemented in class action cases?

14 A. Many dozens.

15 Q. Is Garden City the most experienced
16 company in the United States in doing this kind
17 of work?

18 A. I would like to think so.

19 Q. Now in this case, as you know, at a
20 preliminary hearing before the Court, we
21 presented to Judge Hill a proposed form of
22 notice and went over that notice with him and
23 Judge Hill issued an order approving that form
24 of notice.

□

13

1 Did you review that form of notice
2 before you began to implement the formal notice
3 procedures in this case?

4 A. Yes, I did.

5 Q. What is your understanding of the basic
6 elements of that notice program as ordered and
7 approved by Judge Hill?

8 A. Well, the first thing that we try to do
9 in a notice program is to see what kind of

10 mailing lists are available for members of the
11 class.

12 In this case, there were extensive
13 mailing lists that we obtained in the water
14 districts, that we purchased when there were not
15 sufficient mailing lists in a particular
16 geographic area. We obtained some from
17 counsel. We obtained mailing lists from
18 extensive sources.

19 To supplement --

20 Q. Can I stop you there?

21 A. Certainly.

22 Q. When you say "Mailing lists," I infer
23 that you mean the names and addresses of current
24 customers of the water districts?

□ 14

1 A. That is correct.

2 Q. And how many such names on those mailing
3 lists did you obtain?

4 A. The sum total of mail that we sent out
5 was about 30,000.

6 Q. And then what did you do with regard to
7 those particular names?

8 A. Well, what we do is, first, what we
9 call, we dupe them. That is, what we do is we
10 eliminate duplications. And then we send out
11 the notice via first class mail to the entire
12 mailing lists.

13 Q. So all 30,000 got first class mail
14 notice of this proceeding, correct?

15 A. That is correct.

16 Q. All right. Then what else did you do?
17 You started to say you supplemented that in some
18 way.

19 A. To supplement that, we designed what I
20 would regard as an extensive publication
21 program. We advertised three times in all of
22 the newspapers in the geographic area
23 encompassed by the litigation, from Columbus
24 down to Charleston and the all the newspapers in

□

15

1 between.

2 In addition to that, in order to notify
3 people who may have moved, we advertised in
4 Parade and USA Weekend, which are the two Sunday
5 supplements that each Sunday reach 60 million
6 households, so it was an extensive notice
7 program.

8 In addition to that, we created a
9 website, C8 settlement, where people could
10 access information. And beyond that, we
11 established a toll free number where people
12 could call for additional information, so there
13 were multiple ways in which people could receive
14 the notice in addition to the notice that they
15 received directly in the mail, and it was also a
16 national program because some people may have
17 moved from this area and we wanted to reach
18 them.

19 Q. So the notice program was essentially
20 four pronged, direct mailing to the customers,
21 publication in newspapers, both local and

22 national, a dedicated website and a toll free
23 number, is that correct?

24 A. That is correct.

□ 16

1 Q. Let's back up for just a moment.

2 Did you review the content of the
3 notices that were published in the papers?

4 A. Yes, I did.

5 Q. And did the content of the notice that
6 was published in the various papers comply with
7 Judge Hill's order as to what should be in the
8 notice?

9 A. In my judgment, they did.

10 Q. Okay. Now did you tell us how
11 frequently the publications were made in these
12 papers?

13 A. They were published three times, on a
14 Sunday and then on non-consecutive weekdays in
15 each of the newspapers, so it was a total of
16 three times.

17 In addition to that, some of those
18 newspapers also published Parade and USA
19 weekend, so for some newspapers, it appeared
20 four times, but a minimum of three times.

21 Q. And what was the total circulation of
22 those newspapers?

23 A. I don't have that number in my head.

24 Q. Okay.

□ 17

1 MR. JENNSSEN: Your honor, just for the
2 record in this case, an extensive affidavit

3 by Mr. Pines in which he gives specific data
4 on the identity of each of the newspapers
5 and their total circulations and the dates
6 of publication is all set forth, and that
7 affidavit is attached as an exhibit to the
8 joint motion for final approval in this case
9 and is in the record already.

10 Q. To continue, Mr. Pines, was there a
11 response to either or both of the dedicated
12 website or the toll free number?

13 A. Yes, there was. We received, I believe,
14 over a thousand hits to the website. There were
15 requests for information close to a thousand
16 from outside of the geographic area, so it was
17 clear that people saw the notice, and to the
18 extent that they needed additional information,
19 they responded.

20 Q. So when you say outside of the immediate
21 area, do you mean outside of Ohio and West
22 Virginia?

23 A. That is correct.

24 Q. So a thousand responses?

18

1 A. Yes, sir.

2 Q. Outside?

3 A. Close to a thousand.

4 Q. Close to a thousand. All right.

5 Now in addition to the publications that
6 you caused to be made, did you do any search of
7 the various media to see what the general
8 notoriety of this lawsuit and this issue was?

9 A. Yes, sir.

10 Q. And tell us what you did and what you
11 found.

12 A. What we did was we obtained from counsel
13 the articles that had been accumulated over the
14 past few years that had appeared in the area and
15 we also did our own Nexus search to obtain still
16 further articles, and what we found was more
17 than 400 articles have appeared in the
18 newspapers about this particular case, in
19 addition to whatever television coverage there
20 has been.

21 Q. All since 2001?

22 A. That is correct, sir.

23 Q. And those are in addition to the
24 publications which you made pursuant to the

19

1 notice?

2 A. That is correct.

3 Q. Okay. Now did Garden City have any
4 involvement with regard to the sources of
5 private water?

6 Did it receive any communication from
7 people who asked that their private wells be
8 analyzed?

9 A. Sir, I do not know the answer to that
10 question.

11 Q. How many individuals, if you know,
12 requested to be excluded from the class?

13 A. About 65.

14 Q. And did the notice which went out to the
Page 15

15 individuals by first class mail and the
16 publications all direct that any request to be
17 excluded be sent to Garden City?

18 A. That is correct.

19 Q. So out of all the people to whom it was
20 sent, you received 65?

21 A. That is correct.

22 Q. And how many of those were DuPonters?

23 A. I believe the number is 19.

24 Q. Now based on all of your experience in

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1 providing such notice in class actions such as
2 this, what is your opinion of the notice program
3 approved by the Court and implemented by Garden
4 City?

5 A. I think it was comprehensive. I think
6 it was effective. The published notice would
7 have been sufficient to provide notice under the
8 standards that I'm familiar with, even in the
9 absence of the mailing, and the mailing would
10 have been adequate to provide notice even in the
11 absence of publication, so it was quite an
12 extensive comprehensive program.

13 MR. JANSSEN: That's all I have. Thank
14 you, Your Honor.

15 THE COURT: You're welcome.

16 CROSS EXAMINATION

17 BY MR. DEITZLER:

18 Q. May I just ask one for clarification?
19 when you mailed to the 30,000, that was, by and
20 large, 30,000 households as opposed to

21 individuals, wasn't it?

22 In other words, you weren't mailing to
23 three people in one household if you could avoid
24 it?

□

21

1 A. That is correct, sir.

2 THE COURT: Thank you very much, sir.

3 MR. DEITZLER: Our next witness will be
4 Joe Kiger.

5 (Witness, JOE KIGER, sworn.)

6 DIRECT EXAMINATION

7 BY MR. DEITZLER:

8 Q. You're Joe Kiger, correct?

9 A. Yes, sir.

10 Q. And Mr. Kiger, you occupy a special
11 position in this litigation and is that position
12 that of being one of the named lead plaintiffs?

13 A. Yes, sir, it is.

14 Q. And were you also elected by the group
15 of lead plaintiffs to be the representative of
16 that group for purposes of keeping track of
17 everything and reporting back to the other 11
18 lead plaintiffs?

19 A. That is correct.

20 Q. What caused you to first get involved in
21 this concern? What inspired you?

22 A. Well, the first thing that got my
23 attention, we received a letter from the Lubeck
24 Public Service back in October of 2000. I read

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22

1 the letter and everything that was in it, then I
2 just kind of put it aside and kind of
3 disregarded it for awhile, but as time went on,
4 in the neighborhood, certain things, health-
5 wise, and questions kept coming up about certain
6 ailments and everything that were going on and
7 health problems and seemed like nobody seemed to
8 have an answer.

9 Q. Let's back up for a minute. What was it
10 about that letter that concerned you?

11 Is that a copy of it that we're showing
12 right there?

13 A. Yes, sir.

14 Q. Okay.

15 A. The thing that bothered me I think more
16 about the letter, first of all, there was a
17 chemical in our water. That bothered me in the
18 first place, why was it in there.

19 Q. That's how you found out it was in the
20 there?

21 A. Exactly, through the letter. And as I
22 read on, I kept noticing, and you'll see some
23 underlying statements there, guidelines
24 established by DuPont protective of human

□

23

1 health. Well, all due respect to DuPont, but
2 what does DuPont have to do with our water?
3 That was Lubeck Public Service.

4 Q. That was what generally got you started?

5 A. That was the red flag that started the
6 lawsuit.

7 Q. So what did you do after that?

8 A. So after that was over, curiosity got me
9 and I wanted to find out what was this all
10 about, was it harmful, what was going on, so I
11 started calling different agencies throughout
12 the county. I kept getting basically put off,
13 nobody seemed to know.

14 I went around and I called Charleston, I
15 called the West Virginia Department of
16 Environmental Protection. I couldn't get any
17 answers there. I went to the Safe Water Act
18 people. Couldn't get any answers there. Nobody
19 seemed to know. All I was being told, it was an
20 unregulated chemical.

21 So I kept pursuing it till finally I got
22 to the point where I got ahold of the national
23 EPA in Philadelphia, a gentleman there. I asked
24 him if he could give me some insight, but even

□

24

1 prior to that, I spoke with Don Jackson of
2 DuPont and also Mr. Kennedy in Wilmington. They
3 had toxicologists, I believe, for DuPont at that
4 time. I still was not satisfied with the
5 answers I got.

6 So I kept pursuing it and got ahold of a
7 gentleman in Philadelphia. He asked me to fax
8 him the information, which I did. He said,
9 "I'll get back to you." About three or four
10 weeks went by, I didn't hear anything. I
11 thought well, he's just forgotten about it. But
12 low and behold, I did get a call and the

13 gentleman called me and said, "I'm going to send
14 you some information, and when I do, you will
15 probably want to contact a lawyer."

16 Q. So is that the first you thought of even
17 talking with a lawyer?

18 A. Oh, absolutely: I mean, this went on
19 several months before I even thought about a
20 lawyer or anything. I was just trying to get
21 some answers.

22 Q. So based upon his recommendation, what
23 did you do?

24 A. Based upon his recommendation, I read

□

25

1 the information, I read it and I read it again.
2 I became very alarmed to the point where I
3 wanted somebody professionally to help me get
4 some answers, and at that time is when I called
5 Mr. Bilott.

6 Q. So essentially your alarm was related to
7 your concern that there may be a problem with C8
8 in your water that you had been drinking and you
9 just wanted answers?

10 A. Exactly, yes, sir.

11 Q. And then after you contacted Mr. Bilott,
12 is that what got this whole thing --

13 A. That started this whole thing,
14 absolutely.

15 Q. And then you gathered some other
16 concerned people together and we were invited up
17 to a meeting at Mr. Bill Parrish's house?

18 A. Correct.

19 Q. Is that where the litigation concerns
20 were expressed and discussed with the attorneys?

21 A. Yes, it was.

22 Q. After that, were there a number of
23 public meetings?

24 A. Yes, there were public meetings at

□

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1 Blennerhassett Junior High. We've been there.
2 I think we've gone to Little Hocking. There was
3 meetings there. Also at the Dils Center in
4 Parkersburg, several meetings, informative
5 meetings and everything, basically gathering
6 information and the interests of the people.

7 Q. And during that process, the class
8 representatives were selected?

9 A. Correct.

10 Q. And a lawsuit was filed?

11 A. Yes, sir.

12 Q. Now during that period of time, were the
13 class representatives criticized?

14 A. To say the least, we were criticized,
15 ostracized in the community, kind of socially
16 and everything else, like what were we doing
17 trying to take on DuPont, who, you know, they've
18 been in the valley and they've been good to the
19 valley as an employer and everything and all
20 this and what were we trying to do, you know, to
21 hurt this image and create problems for them and
22 basically run them out.

23 You know, the thing was, here we are
24 trying to shut down DuPont and run them out of

□

1 here.

2 Q. That's what they were saying to you?

3 A. Yes. We were getting all this, and, you
4 know, I feel sorry for the other leads. The job
5 I do and did prior to the job I just took, I
6 dealt with companies and corporations. I was
7 used to taking the flack, but I don't know how
8 the other leads, as far as that goes, were able
9 to put up with it because I do know they took a
10 lot of ridicule.

11 Q. Now did you ever have any intention or
12 desire to shut down DuPont?

13 A. No, none whatsoever, none whatsoever.

14 Q. So this lawsuit wasn't about shutting
15 down DuPont?

16 A. No. All it was was about finding out
17 what C8 was, did it harm the health in the
18 community, that was the main thing.

19 Q. So the lawsuit was filed and then there
20 was a period of what I've referred to in my
21 statement to the Court earlier as litigation?

22 A. Correct.

23 Q. Did you participate and monitor what was
24 going on with regard to the litigation?

□

1 A. Absolutely.

2 Q. Did the other lead plaintiff
3 representatives who were representing the class
4 of people as a whole, did they ask that you
5 undertake that task?

6 A. Yes, they did.

7 Q. Did you see that there were 35
8 depositions taken? I understand you didn't go
9 to all of them but you received them?

10 A. Yes, I was in constant contact with
11 Mr. Hill all the time. Anything that was going
12 on, if I couldn't get to the mediations or the
13 depositions or things, Mr. Hill would keep me
14 informed, and I asked to be informed because I
15 did represent the class and I wanted them to
16 have the best representation I could possibly
17 give them.

18 THE COURT: The Mr. Hill that he's
19 talking about is not me.

20 A. Excuse me, Your Honor.

21 THE COURT: I just wanted to make that
22 clear.

23 A. Mr. Ed Hill.

24 Q. And in your communications with Mr. Ed

□

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1 Hill, the counsel for the class, did you convey
2 the results of those communications to your
3 other lead plaintiffs from time to time? In
4 other words, did all of them also participate?

5 A. Yes, sir, they would call at times and
6 we would talk back and forth and exchange
7 communications and everything because I wanted
8 them to feel, you know, as much part of it as I
9 was.

10 Q. So it's safe to say that all the lead
11 plaintiffs participated actively in monitoring

12 this for the class they were supposed to
13 represent?

14 A. Yes, sir.

15 Q. And how often did you speak with Mr. Ed
16 hill and during what hours of the day or night?

17 A. Sometimes two and three times a day,
18 depending on what the situation. Hours, any
19 time from 11, 12:00 at night to 7:00 in the
20 morning. You know, there's no given time
21 because it was any and every time.

22 Q. Now filed with the Court are documents
23 that explain the time which was put in by the
24 attorneys and the persons involved.

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1 Have you reviewed and do you understand
2 and agree that you monitored and saw that that
3 kind of time was being put in?

4 A. Absolutely.

5 Q. There was a time, or actually twice,
6 when the case went to the West Virginia Supreme
7 Court. You monitored that as well?

8 A. Correct.

9 Q. And did you participate in the
10 preparations on those issues?

11 A. Yes, sir.

12 Q. And did all your lead plaintiffs also
13 participate in that regard?

14 A. Correct.

15 Q. And then at some point, there was
16 initially a trial set and then it was re-set?

17 A. Right.

18 Q. And during that period of time, do you
19 recall that mediation began?

20 A. Right.

21 Q. Now you used to be a labor
22 representative so you know what mediation is?

23 A. Correct.

24 Q. That it's different from arbitration,

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1 right?

2 A. Correct.

3 Q. Tell the Court what you recall of how
4 many times there was mediation, where it
5 occurred, how it went.

6 A. Oh, I think the first mediation I was
7 involved in was in Charleston, West Virginia. I
8 believe it was at Steptoe Law Offices. We met
9 there I believe on a couple occasions.

10 Cincinnati, we had two mediation
11 sessions there. Boston, I believe we had two.
12 I'm thinking six in there all together that I
13 was part of.

14 Q. Did that go over a course of months?

15 A. Yes, several months.

16 Q. And based upon your experience, was it a
17 smooth process or was it a rocky process? Was
18 it tough?

19 A. It was tough, it was. There was times
20 when I had my doubts.

21 Q. And did you observe that everybody did
22 their best but they just couldn't seem to get
23 together?

24 A. Yes. I felt that especially our team,

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1 you know, and I refer to them as a team because
2 the way the attorneys worked and everything in
3 the best interests of the class and everything,
4 you know, I knew the way they worked and the way
5 they put their time in, that something good had
6 to come of it.

7 Q. Now in the discussions that you saw at
8 the mediation, was there ever any doubt in your
9 mind that the team was working for the best
10 interests of the class as a whole and not for
11 any single individual?

12 A. No doubt whatsoever. That's one of the
13 most compassionate teams of attorneys I've had
14 the opportunity to work with.

15 Q. There was eventually, in Boston, a
16 settlement agreement which was reached. Do you
17 recall that?

18 A. Yes, sir.

19 Q. Before the time when it was agreed what
20 would be done for the class, what would be paid,
21 what would be cleaned up, before all of that was
22 agreed to, was there ever any discussion of
23 payment to the attorneys?

24 A. No, sir, none whatsoever.

□

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1 Q. And did you observe that the attorneys
2 refused to allow attorney fees to be a part of
3 the negotiations of what happens on the actual

4 class?

5 A. Yes, because that was brought into a
6 part of mediation at one time and I remember
7 saying no, this is not part of the discussion.
8 This won't be discussed until the settlement is
9 finalized, then we'll discuss attorney fees.

10 Q. So the discussion of whether to pay the
11 attorneys, how much to pay the attorneys, all
12 that came up after the agreement was reached?

13 A. Yes, sir, that's correct.

14 Q. And you understand that the attorney fee
15 aspect does not get paid from the amount that
16 DuPont is paying on behalf of the class?

17 A. Correct.

18 Q. Now in the agreement which was reached,
19 what do you think is the most important thing
20 about this agreement? What is the biggest
21 benefit from your perspective?

22 A. The biggest benefit I see is getting the
23 testing done.

24 Q. Why is that important?

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1 A. Because of the health of the community;
2 to find out, to make sure, to resolve once and
3 for all whether C8 has been a problem linked to
4 human health or not, and this is the big
5 question, you know, is it or is it not, and that
6 we will now get these answers and that's what
7 we're looking for.

8 Q. So the motivation for the agreement to
9 settle and accept the initial cash, the 70

10 million, was to get the testing done, get the
11 health histories and find out does C8 cause a
12 problem or does it not cause a problem once and
13 for all?

14 A. Yes, sir.

15 Q. And you don't care which side of the
16 coin it falls down on, you just want to know the
17 answer, correct?

18 A. Want to know the answers, that's the
19 thing. I asked questions and time and time
20 again, I couldn't get the answers. Now we'll
21 get those answers and I hope everybody will be
22 satisfied.

23 Q. So in your mind, that's something that
24 you wanted, answers, should have been answered

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1 and now is going to be answered?

2 A. Absolutely.

3 Q. And if there is a relationship, if C8
4 causes disease, do you feel that this settlement
5 protects the class members by having medical
6 testing or monitoring provided for to determine
7 whether or not those class members have the
8 disease, first, and second, by preserving each
9 class member's claim against DuPont for whatever
10 compensation may be fair if that disease was
11 caused by C8?

12 A. Absolutely.

13 Q. Now next to that, a part of agreement
14 provides that there is an impartial science
15 panel which will determine the relationships.

16 After all the data is gathered, and
17 understanding that to gather data from 60,000 or
18 so people out of a class of maybe 80,000, that,
19 in itself, is a major thing, but once all that
20 data is gathered and assimilated, is there a
21 science panel that is funded by DuPont that will
22 consider that and all other data, whatever they
23 want to consider, because they're totally
24 impartial?

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1 A. Correct.

2 Q. And although the science panel is paid
3 for by DuPont, do you understand and did you
4 understand when the agreement was reached that
5 DuPont wouldn't pick the science panel and the
6 plaintiffs wouldn't pick the science panel, they
7 would be jointly picked?

8 A. Correct.

9 Q. And so that if you and the attorneys
10 representing the plaintiffs feel that any person
11 that's on that panel would be at all impartial,
12 that person would not be considered?

13 A. Correct.

14 Q. And the same for DuPont; if DuPont feels
15 that any person on the that panel would be
16 unfair to DuPont and not impartial, that they
17 could, in essence, veto the person?

18 A. Correct.

19 Q. And have you watched and monitored the
20 selection process that has gone on and the work
21 of Larry Winter and Larry Janssen in traveling

22 around the country and meeting with various
23 experts? You're aware of all that?

24 A. Correct.

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1 Q. And do you believe that after their, at
2 this point, almost four months of, four or five
3 months of interviewing, receiving nominations,
4 suggestions, that they have arrived at an
5 epidemiological panel that is totally unbiased,
6 eminently qualified and will be fair and give an
7 honest answer?

8 A. Yes, sir, I do. I think they've done a
9 good job.

10 Q. And so that's the second part. After
11 the funding of the human health project, the
12 second part is the funding of a human health
13 study.

14 Do you understand that that, although
15 it's estimated in the settlement will cost five
16 million dollars, DuPont has agreed to pay
17 whatever it will cost to get that done?

18 A. Correct.

19 Q. In other words, if the epidemiologists
20 and then subsequently the medical doctors, if it
21 takes more money, if they have to take more
22 studies, then that's what DuPont has agreed to
23 do?

24 A. Yes, sir.

□

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1 Q. Now probably the most important
2 immediate effect to the community would be the

3 clean-up of the water because we don't know the
4 answer. Would you agree with that?

5 A. Absolutely.

6 Q. And was that something that was
7 negotiated and discussed and finally the real
8 straw that moved these things forward, because
9 you felt that it was important to get that done
10 as soon as possible?

11 A. Absolutely.

12 Q. Is your concern based upon the fact that
13 since we don't know, better be safe than sorry
14 and get the C8 out of the water?

15 A. Absolutely, yes, sir.

16 Q. So based upon all that, do you feel that
17 the settlement is appropriate and in the best
18 interests of the class that is the large group
19 of people who have been exposed to C8 whom
20 you're supposed to represent?

21 A. Yes, sir, I do.

22 Q. Were you ever promised anything as part
23 of your participation?

24 A. No, sir.

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1 Q. Was it that you sought out the
2 attorneys, the attorneys did not seek you?

3 A. That is correct. You know, I went after
4 them, they didn't come after me.

5 MR. DEITZLER: That's all the questions
6 I have for Mr. Kiger, Your Honor.

7 THE COURT: Thank you. Mr. Janssen, do
8 you have any questions?

9 MR. JANSSEN: No, Your Honor, I don't
10 have a question. I'm just the next person
11 in line here.

12 With the Court's permission, because
13 this is the first time, at least in open
14 Court and before Your Honor and before the
15 other people, that the science panel has
16 been extensively introduced, I want to spend
17 a few minutes, with the Court's permission,
18 to put on the record both who they are, the
19 selection process that was gone through to
20 assure their impartiality and the path
21 forward for them.

22 THE COURT: But you're not going to ask
23 any of these questions of Mr. Kiger?

24 MR. JANSSEN: No questions of Mr. Kiger,

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1 no.

2 THE COURT: Mr. Kiger, thank you.
3 You're excused.

4 You may proceed.

5 MR. JANSSEN: First, Your Honor, the
6 science panel has, so far, been addressed as
7 simply that, a science panel, but it's
8 probably useful to explain what type of
9 scientists they are.

10 These, by agreement of both sides, are
11 epidemiologists. That's a mouthful, but
12 epidemiologists are basically those
13 scientists who are trained and skilled at
14 looking at populations of people such as the

15 people involved in this class.
16 what they look for, among other things,
17 is the relationship of, in this case,
18 chemicals, but it could be anything, to
19 causes of human disease such as smoking and
20 lung cancer, obesity and diabetes,
21 whatever. They look to see whether one
22 thing is associated with another. And so
23 both sides agreed that those types of
24 scientists or that type of scientist was at

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1 the heart of the question of whether C8 is
2 related to or causes any human disease in
3 this community with the C8 at the levels
4 that it is in the water.

5 Now it's important for everybody to
6 understand that these independent
7 scientists, epidemiologists, under our
8 agreement, have the ability to do a couple
9 very important things.

10 They can, on their own, at DuPont's
11 expense but with no control at all by
12 DuPont, retain with and consult with any
13 other experts of any kind that they want to
14 consult with in attempting to answer this.
15 If they want to talk to toxicologists,
16 completely independently, or hydrogeologists
17 or whatever the discipline is, they have the
18 authority to do that.

19 The second important part is that they
20 are absolutely free to, without restraint,

21 to consider whatever information that they
22 think is important. We do not have, neither
23 side has the ability to contact them
24 directly. In other words, there is not

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1 going to be any ex parte communication with
2 these people. We can send them materials,
3 both sides can send them materials but
4 everything has been done to assure that they
5 won't be lobbied and that they will be
6 impartial.

7 So now let me go to the selection
8 process.

9 THE COURT: And when you send them the
10 material, you copy the other party?

11 MR. JANSSEN: Absolutely. As a matter
12 of fact, all materials, Your Honor, go
13 through an independent person who acts as a
14 clearinghouse or fund, so we have that
15 safeguard.

16 Now on the process of selecting these
17 people, I want to begin by saying that I
18 worked with Larry Winter, who is truly a
19 gentleman and was a pleasure to work with,
20 and we traveled the country extensively,
21 this country and Canada, looking at people.
22 He really did represent the interests of the
23 class very, very well.

24 The criteria for the scientists was

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1 important because at the end of the day,
2 DuPont is a science company and believes in
3 science, and we, like Mr. Kiger said, we
4 want to put this issue to bed period, if we
5 can, and we believe we can through this
6 impartial panel.

7 So among the main criteria is none of
8 the people which were even considered could
9 have ever worked for DuPont, should have had
10 minimal industry relationship. In other
11 words, working with industry or business,
12 although some of that is inevitable with the
13 key people.

14 They had to be eminent in their field.
15 We just could not -- They just had to be
16 eminent, if not pre-eminent in their field.
17 They had to have experience in what is
18 called environmental epidemiology. That is
19 looking at things that affect people that
20 come from the environment as opposed to just
21 limiting it to occupational epidemiology
22 that looks really only at the workplace, and
23 ideally, they should have had experience in
24 looking at large populations, because that's

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1 a specialty in and of itself.

2 I'll let Mr. Winter, later on, if he
3 likes, detail where we went and who we
4 looked at, but both sides exchanged lists
5 and we crossed people off lists, and I don't
6 know how many people we put through this

7 process. Then when we winnowed it down, we
8 both looked at as much of their literature
9 that we could stand, and all of these
10 people, because they are pre-eminent, have
11 CV's like this, you know, hundreds of
12 articles. We looked at these to ensure
13 their impartiality. We talked to them on
14 the phone at least once.

15 If they evidenced any interest, we went
16 out and talked to them personally and we
17 spent several hours really with each one,
18 and then we followed up with them. So that
19 was the process, all designed to ensure
20 their impartiality.

21 Now at this point, I would like to just
22 show briefly who was selected, not in order
23 of importance or seniority or anything
24 else.

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1 This is Tony Fletcher, Anthony
2 Fletcher. He's a Ph.D. and he's the Senior
3 Lecturer at the London School of Hygiene and
4 Tropical Medicine at the University of
5 London. Senior Lecturer, it's not like the
6 American system. That is a key position in
7 the hierarchy of that department.

8 He is a very experienced epidemiologist,
9 has done work both in the United Kingdom and
10 all over Europe in this regard. We were
11 very pleased to get him.

12 He has worked for the International

13 Agency on Research and Cancer in Leon,
14 France, and was one of their important
15 epidemiologists for a number of years and he
16 has vast experience in environmental
17 epidemiology.

18 Let's go to the next one. The next is
19 David Savitz. David Savitz, I think he's
20 the current President, although he might be
21 the Immediate Past President of the
22 Pediatric and Perinatal Epidemiology
23 Society, and he was selected, among other
24 things, because of his experience with and

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1 interest in things related to reproduction
2 and to children, as well as being a very
3 renowned environmental epidemiologist. He's
4 the Chair of the Department of Epidemiology
5 and the School of Public Health at the
6 University of North Carolina.

7 He's, for a long time, been on a very
8 select independent panel of experts which is
9 utilized by the federal court system when
10 the Court wants to select an expert to
11 advise the Court as opposed to having an
12 expert retained by the parties.

13 Next is Kyle Steenland, and he brings
14 something very important to this. He brings
15 a public health perspective. By that, I
16 mean he worked during all or most of the
17 1990's at least with the National Institute
18 of Occupational Safety and Health, which we

19 generally call NIOSH, doing epidemiology
20 work, specifically looking at it from a
21 public health perspective.

22 He has two Ph.D.'s, he's got two or
23 three Masters, he's a Ph.D. in mathematics
24 as well as in epidemiology. He studies

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1 breast cancer, prostate cancer, lung
2 cancer. Environmental epidemiology is
3 really his passion. His sub-specialty and
4 what he has written chapters in several
5 textbooks on is epidemiological method in
6 risk assessment, so he brings something very
7 important to the panel. And that's our
8 group.

9 They have all expressed eagerness. They
10 think that this, the way that the parties
11 have designed to address this issue in a
12 scientific way is unique to them and they
13 are all very enthusiastic to be part of this
14 process and are chomping at the bit to
15 begin, subject to the results of this
16 hearing.

17 Now in terms of timing, because this
18 question may come up in the Court's mind,
19 Mr. Winter and I have talked about the
20 initial results being produced in about 12
21 to 15 months from beginning, but it's
22 important to tell the Court this: That
23 their main charge is to go with all
24 deliberate speed, but no matter what, to do

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1 it right. That's the important thing.

2 Now I want to move from that, from the
3 science panel, just to the process as it
4 develops.

5 If, in fact, it is determined by the
6 science panel that there is a causal
7 relationship between C8 and any disease or
8 diseases, then an entirely separate medical
9 panel will be set up to determine what, if
10 any, medical monitoring for those diseases
11 is appropriate. This scientific panel will
12 not be part of that. We have agreed that
13 that very important topic, should it arise,
14 is something for medical doctors, not
15 epidemiologists, to address, and so what we
16 have designed into our settlement is that
17 the parties will again sit down, and I hope,
18 if I'm working on it, I sure hope Mr. Winter
19 is my counterpart, we would then select
20 medical doctors who are impartial and expert
21 in medical monitoring and they would then
22 make that decision.

23 So that's the program, Your Honor.

24 THE COURT: Thank you, Mr. Janssen.

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1 MR. WINTER: Your Honor, if I could just
2 briefly. My name is Larry Winter and it was
3 my good fortune to spend a considerable
4 amount of time in the past several months
5 traveling with Mr. Janssen, who is likewise

6 a true gentleman and a pleasure to have
7 worked with.

8 I want to add just briefly to his
9 comments so that the Court will have this
10 information and interested members of the
11 public will know the extent to which
12 DuPont's counsel and plaintiffs' counsel went
13 to try to identify the best available
14 epidemiologists to serve on this very
15 important science panel.

16 I will try not to duplicate much of what
17 Mr. Janssen said but I want to repeat,
18 because I think it bears repeating, that the
19 hallmark of the criteria for selecting these
20 people, based upon the settlement agreement
21 reached between the parties, was that they
22 had to be selected by total mutual
23 agreement. That means either side could,
24 for whatever reason or for no reason, reject

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1 any candidate suggested by the other.

2 In fact, we began this process because
3 in earlier mediation discussions that
4 occurred before the meetings in Boston in
5 early September, which resulted in the
6 agreement in principle, we had actually
7 started earlier looking at this component of
8 what we were conceptualizing at that point
9 was the settlement agreement that we were
10 working toward because we knew that
11 selection of this science panel would be key

12 and a very important component. We began
13 exchanging information back in July, about
14 mid July, and as Mr. Janssen suggested, we
15 have been through voluminous material in an
16 effort to identify the best available
17 epidemiologists who met all of the criteria.

18 Some very importantly qualified or very
19 well qualified people, unfortunately, we had
20 to exclude because they had either too much
21 contact or relationship with industry or too
22 much contact or relationship in testifying
23 as experts in plaintiffs' cases for us to
24 feel comfortable that they would come to

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1 this project unbiased and untainted by any
2 previous work in that regard.

3 After the agreement in principle was
4 negotiated in early September, we continued
5 then in earnest and began the process of
6 interviewing these candidates in October.

7 As Mr. Janssen indicated, all of the
8 interviews were preceded, all of the
9 in-person interviews were preceded by at
10 least one comprehensive telephone interview
11 in which we jointly participated to lay out
12 to each candidate the scope and objective of
13 the science panel project as it relates to
14 the settlement agreement and to determine,
15 as best as we could, their level of interest
16 in the project, and if we were satisfied
17 that they had a sufficient level of

18 interest, then we arranged in-person
19 interviews.

20 Beginning in October, we interviewed
21 John Peters, who was head of the
22 epidemiology department at UCLA, and after
23 interviewing Dr. Peters, we traveled to
24 Vancouver, British Columbia and interviewed

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1 Dr. Paul Demers.

2 From there, we were fortunate in that,
3 as Mr. Janssen has identified Dr. Anthony
4 Fletcher from London, England. Fortunately,
5 we contacted Dr. Flesher at a time when he
6 already had a trip to the United States
7 planned so we didn't have to make a trip to
8 London, England to interview him. He met us
9 in Washington, D.C.

10 In November, in early November, we
11 traveled to Atlanta, to Emory University, to
12 interview Dr. Kyle Steenland, who is another
13 one of the members that was selected, and he
14 is currently associated with the Emory
15 University School of Public Health.

16 Closely following Dr. Steenland's
17 interview, we went to Chapel Hill, North
18 Carolina, the hospital of Dr. Savitz at the
19 University of North Carolina, and
20 interviewed him.

21 Following that -- and by the way, by the
22 time this process had unfolded in mid
23 November, neither Mr. Janssen nor I knew how

24 each other felt about the other candidates.

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1 we had not exchanged information, we had not
2 tried to tip our hand or indicate one way or
3 the other whether we thought any of these
4 candidates were either acceptable or
5 unacceptable for any reason. We wanted to
6 try to go through the process, identify as
7 many as we could and then make sure all of
8 those people were within the candidates of
9 people to be considered.

10 In December we interviewed Dr. Carol
11 Hogue, who was also associated with the
12 Emory University School of Public Health,
13 and we conducted extensive telephone
14 Dr. Sander Greenland, who is with USC, and
15 Dr. Leslie Vernsteen, also of USC.

16 As a result of this process, and I can't
17 emphasize too much the sheer volume of
18 material that Mr. Janssen alluded to that
19 both of us had to go through in researching
20 each of these candidates, but as a result of
21 that process, in early January, we exchanged
22 names of three candidates of all the ones
23 that we had interviewed and it was our good
24 fortune to agree, at least at the outset, on

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1 two of these candidates, and it wasn't very
2 long that we were able to agree on the third
3 one, so we are confident that the panel

4 members selected are eminently qualified,
5 unbiased and neutral in their approach to
6 the issues that comprise their charge, and
7 we're confident that they will conduct a
8 thorough and unprecedented study of one of
9 the largest human populations that's ever
10 been studied for a single chemical in this
11 community, and I think the true
12 beneficiaries of all of this hard work are
13 going to be all the men, women and children
14 who will be the focus of this community
15 study that is being funded by DuPont and the
16 focus of the health project that's been
17 implemented pursuant to the settlement of
18 this case. Thank you very much.

19 THE COURT: A couple questions.

20 MR. WINTER: Yes, sir.

21 THE COURT: You keep mentioning the
22 community, but the results of the study are
23 going to be pretty much nationwide, if not
24 worldwide.

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1 MR. WINTER: Absolutely, Your Honor.
2 That's an excellent point. There is a
3 tremendous amount of interest in this
4 project nationwide and internationally.

5 THE COURT: Secondly, how do these three
6 panel members propose to proceed? That is,
7 how to meet and so forth and how are they
8 going to operate as a group? They're from
9 various distant parts of the world in this

country and abroad.

MR. WINTER: Right. Fortunately, two of them are relatively close in geographic area. Dr. Fletcher, of course, is from England, but one thing that I learned, and I think Mr. Janssen also learned during this process, is that since we focused on only the most eminently qualified epidemiologists, virtually every epidemiologist that we interviewed knew all of the other ones that we were interviewing. Dr. Fletcher is acquainted with Dr. Savitz and acquainted with Dr. Steenland as well, and they all attend meetings and conferences at various places

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in the world together.

In fact, one of the things that we talked to them about, in particular Dr. Fletcher, was how we might coordinate their meetings with their attendance at epidemiology conferences that are scheduled in this country, and occasionally Dr. Savitz and Dr. Steenland will travel outside the United States to attend these conferences.

we have also made provisions in our settlement agreement and contract that we propose to enter into with each of the science panel members to enable them to engage whatever administrative staff they need to help coordinate their work, but we

16 think with modern technology and the ability
17 to share documents and information over the
18 Internet, through e-mail, through telephone
19 conferences and that sort of thing, that
20 we're confident that we'll be able to help
21 facilitate their meetings and interaction
22 with each other.

23 THE COURT: We'll see how to goes.

24 MR. WINTER: Right.

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1 THE COURT: Okay.

2 MR. WINTER: Thank you.

3 MS. STENNES: Your Honor, the next aspect
4 we would like to cover before the morning
5 break, if there is a morning break, is the
6 water treatment that DuPont is proposing to
7 provide for the community because we feel
8 that's a key aspect of it.

9 MS. STENNES: Good morning, Your Honor.
10 I'm Libretta Stennes.

11 The Court is familiar with the water
12 treatment terms in the settlement. We're
13 just going to do a briefly overview of that
14 and then talk about the technology that's
15 going to be implemented and give the Court a
16 status on where things are in the process.
17 So DuPont will offer six public water
18 districts state of the art treatment
19 technology that's designed to reduce the
20 level of C8 in the water supply to the
21 lowest practicable levels, and DuPont will

22 also offer eligible private water sources
23 state of the art water treatment or its
24 equivalent on a case by case basis. I'll

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1 talk a little bit about that later in the
2 presentation.

3 DuPont will pay for the design,
4 installation, operation and maintenance of
5 the treatment facilities at least until the
6 science panel completes its work.

7 If the science panel finds no
8 association or no probable link, DuPont is no
9 longer obligated under the settlement to provide
10 the water treatment unless the amount of C8
11 present in the particular water supply exceeds
12 an applicable state or federal regulation
13 governing C8, and if the science panel finds a
14 probable link to any disease, DuPont is
15 obligated to continue the water treatment.

16 THE COURT: whose standard is going to
17 be, the federal or state standard? And I
18 think they vary, don't they?

19 MS. STENNES: They do.

20 THE COURT: what one is going to be
21 considered to be the controlling standard?

22 MS. STENNES: If there's an exodence
23 over any, Your Honor, whatever is the lowest
24 level.

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1 THE COURT: The lowest level?

2 MS. STENNES: Uh-huh. For the eligible
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3 public water districts, we have two
4 districts in West Virginia. That's the
5 Lubeck Public Service District and Mason
6 County Public Service District. And four
7 districts in Ohio, Little Hocking Water
8 Association, Tupper's Plains Chester Water
9 District, City of Belpre and the Village of
10 Pomeroy.

11 Any class member with a private well
12 that meets two criteria; one, the private
13 well has to be the sole source of drinking
14 water at that location and the private well
15 has to contain quantifiable levels of C8.
16 One of the things that we did, we had
17 private water sampling done as part of the
18 consent order for several members of the
19 community, but one of the elements of the
20 settlement during the notice period was that
21 class members were informed that if they had
22 a private well that was the sole source of
23 water and they had never had a well test,
24 they could request to have DuPont come out

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1 and run analysis. We have had about a
2 hundred of those requests, and so far, done
3 the analytical on almost all of them, will
4 continue to complete that probably
5 definitely within the month of March, and
6 those folks have been receiving their
7 results back so they'll know if they're
8 eligible.

9 There's a conceptual treatment facility
10 for the public water districts. One
11 important point is that the treatment will
12 be unique to each of the six water
13 districts, but the general concept is that
14 they will use large diameter granular
15 activated carbon beds. They'll be housed in
16 a building and they'll be mounted on
17 concrete slabs.

18 DuPont will provide heating, lighting,
19 insulation to both the building and the
20 piping, a pump to maintain the water
21 pressure, and the building will be placed so
22 that there's truck access to allow changing
23 of carbon beds whenever necessary.

24 This just gives an idea of what a small

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1 commercial installation would look like.
2 They're not going to be exactly like this
3 but that's just an idea. (Presentation on
4 overhead projector.)

5 The technology that's going to be used
6 is referred to as granular activated
7 carbon. DuPont conducted a two year pilot
8 study, and in that pilot, treated water
9 containing approximately 7 to 11 parts per
10 billion of C8. The study data is scaleable
11 to higher volume municipal water systems and
12 the carbon that was used in that pilot study
13 was food grade quality carbon that's
14 suitable for drinking water treatment.

15 The pilot facility pumped about 60
16 gallons per hour of ground water through a
17 series of these GAC beds and each of those
18 tanks on that unit is a separate GAC bed.

19 The system, during the duration of this
20 pilot, demonstrated excellent performance
21 since it began in August of 2000, both in
22 the ability to remove C8 from the water as
23 well as the time that it took before the
24 carbon filters needed to be changed, and

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□
1 there were stabilizing operating parameters
2 for the pilot, and that's something that's
3 important to the public drinking water
4 systems because they can't interrupt their
5 treatment to provide drinking water to their
6 customers.

7 Since the system became operational,
8 they treated over 900,000 gallons of water,
9 so DuPont, through this pilot, collected a
10 large volume of data.

11 This is a very simple flow chart that
12 just gives the Court and the interested
13 members of the public an idea of how this
14 system will work. If you imagine two
15 filters in a series, with water flowing
16 through, the first filter takes C8 out until
17 such time that the filter becomes what's
18 referred to as blinded, but essentially
19 until such time as C8 can pass through the
20 first filter, and there will be a monitoring

21 step between the two filters so that both
22 the water district and DuPont will know when
23 that happens.

24 At that point, there's still a second

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1 filter that's still completely operational.
2 The first filter will get changed out and a
3 new filter will be placed in sequence behind
4 the second, so at all times there will be
5 one operational filter removing C8 from the
6 water. There won't be a point when C8 goes
7 to the finished water drinking supply.

8 Since the agreement in principle was
9 reached back in September, the parties have
10 been working together to communicate with
11 the public water districts and get
12 information necessary from each of them to
13 design what will be, as I said, an
14 individual system for each water system.

15 DuPont assembled a treatment design team
16 consisting of a variety of disciplines with
17 folks in hydrogeology, engineering,
18 purchasing, and the design team has met at
19 least once with each of the water districts,
20 and in many of the cases, has made it back a
21 second time to actually tour the public
22 water districts and get a sense of where
23 this treatment system could be installed in
24 the process that's already existing.

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1 Calgon Corporation is also working on
2 this project with DuPont and is running what
3 is referenced as accelerated column testing,
4 and that's essentially a mini pilot that's
5 designed to learn more about what's in the
6 raw water supply of each of these districts,
7 because that will influence how long these
8 carbon beds will remain operational.

9 We've had results back from three of the
10 six districts and the results are
11 demonstrating very positive results,
12 actually better than was expected, and it
13 looks like the carbon beds for the first
14 three districts that are going to be tested
15 are going to last for a substantial period
16 of time before requiring a change.

17 The treatment design team, as I said, is
18 also continuing to work with the water
19 districts to get additional technical
20 information and put together conceptual
21 plans specific to the district and DuPont is
22 also communicating with regulatory agencies,
23 both in Ohio and West Virginia, to identify
24 what issues may exist prior to installation

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1 and do what they can to address those in a
2 timely fashion so that there are no
3 regulatory delays significantly impacting
4 the ability to get these systems
5 operational.

6 For the private water sources, as I

7 explained, we are still receiving analytical
8 information back for some of these private
9 well owners, but DuPont is in the process of
10 analyzing geographically where these
11 eligible water sources are located and
12 determining what makes most sense for the
13 private well owner.

14 The design team is looking at an
15 individualized carbon treatment system that
16 could be placed in the home or looking at
17 other options such as potentially linking
18 folks up to an existing public water supply,
19 if that makes more sense. And again, DuPont
20 will make appropriate communication with
21 legislative agencies so if there are
22 regulatory issues raised by the private
23 treatment system, they will be minimal
24 impact to the time line. I think that's all

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1 we have by way of presentation but certainly
2 if the Court has any questions --

3 THE COURT: You mentioned that the
4 results came back in connection with your
5 treatment facility as positive. That could
6 be termed different ways. When I get the
7 drug test back positive, that means that
8 there are some things in the person's urine
9 or blood that makes him criminally liable;
10 but by positive, you meant beneficial?

11 MS. STENNES: Beneficial. It's taking
12 C8 out of the water, out of the water

13 samples that were taken from these water
14 districts, but what the accelerated column
15 test is also designed to do is give some
16 sort of predictive time line as to how long
17 the first carbon bed will remain in place
18 before it needs to be changed. So by
19 positive, what I meant there was it's taking
20 much longer for the carbon to be used than
21 what was expected.

22 THE COURT: Okay. Thanks.

23 MR. DEITZLER: Your Honor, there are two
24 other aspects, actually three other aspects

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1 of that portion of the settlement that I
2 want to be sure that we emphasize. One is
3 that although it's estimated that the cost
4 of this filtering for the six water
5 districts and the wells will cost around 10
6 million dollars, that is not a ceiling, that
7 is just an estimate, and the agreement says
8 that DuPont offers this and if the water
9 districts accept, DuPont will put it in no
10 matter what it costs.

11 So, for example, if they have to get the
12 thing set up, if they have to purchase
13 property at a higher level because it's in a
14 flood plain or if they have to, whatever
15 they have to do, there's no cap on this at
16 10 million. And the reason I bring it up,
17 there's a lot of public misperception about
18 that because people have called me at my

19 office and said, "Well, we don't think 10
20 million dollars will cover this for six
21 water districts," and they need not be
22 concerned about that because whatever it
23 costs, DuPont is obligated, if the
24 settlement is approved, is obligated to

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1 provide if the water districts accept it.

2 The second aspect that I wanted to make
3 clear, because I have received some calls
4 and some confusion on it and I want to make
5 sure that we clarify it here, is that the
6 water districts are not forced to accept the
7 treatment.

8 In other words, if the water districts
9 feel that this is not something that they
10 want, they don't have to take it. It's
11 entirely voluntary on the water districts'
12 part, involuntary on DuPont's part. Well,
13 except that they have agreed to do it by
14 settlement. But once the settlement is
15 approved, if it is approved, DuPont has to
16 provide it if the water district accepts.

17 THE COURT: Why would a water district
18 decline it?

19 MR. DEITZLER: Don't know, other than
20 they may have another way they want things
21 done. And that brings me to the third
22 point.

23 If the water districts accept or don't
24 accept the treatment which would be provided

□

1 by this settlement, if it's approved, they
2 do not give up any rights to litigate
3 separately for more or different or whatever
4 they want on behalf of each individual water
5 district. This, by participating and
6 allowing DuPont to filter the water as has
7 been proposed, they do not give up their
8 right to make a separate claim against
9 DuPont if they want more. So they don't
10 waive anything. And that was essential
11 because we don't represent the water
12 districts. We represent the people and the
13 people have been exposed to C8 whether they
14 wanted to or not.

15 We felt, as a part of our settlement, if
16 we could eliminate that exposure at an early
17 point, because as Mr. Janssen pointed out,
18 it may be several years before we know what
19 C8 causes or doesn't cause, so if we
20 eliminate the exposure right up, we felt
21 that was an important aspect of the our
22 representation of the class, but we can't
23 force it on any water district and we aren't
24 trying to, and they don't have to accept it

□

1 and they can negotiate for more or they can
2 still do whatever they want. They waive
3 absolutely nothing by accepting it. So
4 those questions have been posed to me by
5 persons who have called me on the telephone

6 from several different areas so I just
7 wanted to make sure that we were clear on
8 that.

9 THE COURT: If a water district
10 treatment plant would opt-out, so-to-speak,
11 decide not to accept it, what would be the
12 effect on their customers? They would not
13 have the benefit of this, would they?

14 MR. DEITZLER: If a water district would
15 opt-out, then DuPont would have no further
16 obligation under our settlement to do
17 anything. The water district would still be
18 able to bring its own claim and, you know,
19 maybe they would get that resolved at some
20 point and maybe they've had discussions to
21 this point and are working on other things
22 as we speak, because I'm not in that loop.

23 I don't represent the water districts
24 versus DuPont and I don't know to the extent

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1 that they've been having discussions, but
2 that's the best I can answer that question.

3 we just did what we could through our
4 case to provide something and it's the best
5 we would come up with. We tried to
6 negotiate for more and that's what we were
7 able to come up with.

8 THE COURT: If a water district does --
9 this may be beating a dead horse because you
10 haven't had any water districts indicate
11 that they will not accept this yet at this

12 point, have you?

13 MR. JANSSEN: That's correct, Your
14 Honor, they have not. They have been very
15 interested in the technical issues. Those
16 technical issues have been addressed and I'm
17 very optimistic that they're going to take
18 advantage of this, as, of course, we believe
19 they should.

20 THE COURT: I was just trying to close
21 whatever loopholes there might be. If they
22 would reject it, then would their customers
23 be effected one way or another? They would
24 still be members of the class, would they

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1 not?

2 MR. JANSSEN: Well, yes, because the
3 water districts, as legal entities, are not
4 part of the class obviously because they do
5 not consume water in the sense that
6 consumption is defined and meant in the
7 agreement, so they're there, they're
8 interested, they have no legal standing.
9 They're not bound by the terms of the
10 settlement. They're simply being offered as
11 part of a comprehensive, again, science-
12 based solution and filtration system
13 designed to take the C8 out of the water.
14 That's it. And again, we hope that that
15 moves forward to completion.

16 MR. DEITZLER: In fact, as I understand
17 it, they've already done a lot of

18 preliminary work in some of the water
19 districts so when this is a go, they will be
20 moving quick. There won't be much delay.

21 The next witness, Your Honor, may be a
22 little bit lengthy and I didn't know if you
23 took a mid morning break.

24 THE COURT: Let's do that. Take a

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1 break.

2 MR. DEITZLER: Thank you, Your Honor.

3 THE COURT: Come back in about 15
4 minutes. Thank you.

5 (Recess taken.)

6 THE COURT: Proceed.

7 MR. DEITZLER: Call Dr. Paul Brooks.

8 THE COURT: Dr. Brooks, raise your right
9 hand.

10 (Witness, A. PAUL BROOKS M.D., sworn.)

11 DIRECT EXAMINATION

12 BY MR. DEITZLER:

13 Q. Dr. Brooks, I believe the Judge and I
14 both know who you are but there might be other
15 people in this room who don't, so would you
16 identify yourself, please?

17 A. Yes, my name is A. Paul Brooks, Jr. I
18 live at 5000 Emerson Avenue. I've been there
19 about 32 or 3 years. I have been in town since
20 1969; practiced general medicine until 1990.
21 Then I was involved with Camden-Clark Hospital
22 for four years in an administrative position,
23 then I've been, the last four years after that,

24 I was involved in an HMO, and subsequently

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1 retired from that until this came up.

2 Q. Now going back to Camden-Clark, what did
3 you do for Camden-Clark?

4 A. I was Vice-President of Medical Affairs
5 and Operations. I had the medical staff under
6 me. I had Risk Management, Quality Assurance.
7 I had the Emergency room, I had Medical
8 Records. That was the major department that
9 worked for me when I was at Camden-Clark.

10 Q. You probably heard me say this may take
11 a little while so I'm going to get you this
12 glass of water, if that's all right. Try to
13 speak up, if you can, so that these people can
14 hear, in addition to the Judge.

15 The Judge is the most important because
16 he makes the decision but the people here are
17 equally collaterally important because it's
18 going to affect them.

19 Who is Art Maher?

20 A. Art Maher is a friend of mine who was,
21 when I came to town, was the Chief Executive
22 Officer of St. Joseph's Hospital, and Art and I
23 have known each other since I arrived in town
24 and he was an individual that also was recruited

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1 to enter this project, to work with -- we were
2 to work together on it, in other words.

3 Q. At the time when you were working, you

4 were working at, as far as hospital work, you
5 were one of the administrative people near the
6 top over Camden-Clark and he was the top guy at
7 St. Joseph's Hospital, correct?

8 A. That's correct.

9 Q. So those are the two hospitals in
10 Parkersburg?

11 A. That's correct.

12 Q. Both of you were retired when you were
13 approached?

14 A. That's correct.

15 Q. And neither of you really intended to do
16 any more work, did you?

17 A. Not if we could get away from it.

18 Q. So how did you become involved?

19 A. I received a phone call one day, I think
20 it was probably in September, the middle of
21 September, somewhere in that range, from you,
22 stating that there had been a settlement in
23 principle to the C8 class action suit, and in
24 that settlement, there would be, if it went

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1 through, there would be funds that would be
2 allotted to conduct a large data collection
3 study on the individuals that had been using the
4 contaminated water from C8, and along with Art
5 Maher, would I have any interest in conducting
6 such a study, designing it and, or us designing
7 it, I should say, and implementing it and
8 carrying it out to collect the data on such a
9 project, and I said, "well, right off the top of

10 my head," I said, "It intrigues me but I think I
11 need a lot more detail."

12 I couldn't speak for Art at that time.
13 We hadn't even spoken about it. I didn't even
14 know if he even knew that I had been contacted
15 at that point, so a meeting was set up some time
16 later, within a week, I believe, and we actually
17 met at my home and we had I think all the
18 attorneys here that's present with you at that
19 meeting, Art and I, and after a long, detailed
20 explanation of the history of the origin of the
21 suit and so on and so forth, why, Art and I had
22 some questions to ask and then we decided or
23 said that we would attempt to do the project for
24 you.

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1 Q. During that process, did you both sign
2 confidentiality agreements with regard to
3 certain data that you would receive that's
4 protected under orders of this Court?

5 A. Yes.

6 Q. So you had access to not only the
7 information in the public domain but also the
8 information that's been obtained through
9 discovery in this court?

10 A. That's correct.

11 Q. And based upon what you found out from
12 the meeting and from the information that was
13 provided to you, what was your conclusion?

14 A. Well, obviously, you know, living in the
15 community, I, of course, read all the press

16 releases, or the ones that were in our paper
17 here, about the contamination and there was
18 concerns over that and I felt that we should get
19 some scientific answers to the problem and
20 settle it that way, if possible.

21 Q. So was your primary motivation that you
22 felt that you and Mr. Maher put together a group
23 to get the data which would be necessary to go
24 to the science panel and the epidemiological

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1 panel to answer the questions as to what, if
2 anything, does C8 do to individuals from a
3 health standpoint?

4 A. Yes, that's correct.

5 Q. Is your interest primarily because of
6 your medical background, this is something that
7 concerns you, and also because of neighbors,
8 friends and people in the community?

9 A. That's correct.

10 Q. If this project is approved, do you have
11 a dog in the hunt, so-to-speak? Do you care
12 which way it lands, that there is a
13 relationship, isn't a relationship? Does that
14 matter to you?

15 A. I have no bias or preconceived ideas
16 about and really don't care which way it goes
17 actually as far as what the data shows. It will
18 show whatever it shows.

19 Q. And when you say it will show whatever
20 it shows, that's what you want is whatever it
21 shows, wherever it lands?

22 A. Absolutely.

23 Q. And you don't have any incentive
24 whatsoever to want C8 to cause a human defect or

□

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1 not to cause it?

2 A. No, I have no bias one way or the other.

3 Q. And is Art Maher of the same mind?

4 A. Yes.

5 Q. Had the two of you ever worked together
6 on a project before?

7 A. Oh, I think we tried to combine some
8 services a couple of times throughout the years.

9 Q. In other words, hospitals were never
10 merged?

11 A. Probably not.

12 Q. So after you notified me and the other
13 attorneys here that you would be willing to
14 undertake this project if the Court approved it
15 and if it came into being, what did you do with
16 regard to formulating a plan?

17 A. Well, sort of at that meeting, Art and I
18 had been able to talk a little bit and we had
19 began to go through the thinking process of how
20 we might attack this situation, as far as
21 gathering of data in a short period of time and
22 a lot of data in a short period of time on a
23 very large number of individuals.

24 So we decided the best thing to do would

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1 be we would form a corporation because we would

2 need to be negotiating contracts and things with

3 certain vendors like laboratories and so on and
4 so forth, and we would have to hire an adequate
5 staff to accomplish this mission, so we
6 developed a plan logically to, or the
7 development of an overall plan to logically
8 process this large number and we felt the plan
9 would have to be very user friendly and, of
10 course, it would have to meet all the Court
11 orders and comply with the order.

12 Thirdly, we felt that it should be
13 launched as soon as possible, if a settlement
14 became final, because we have already been
15 planning, for instance, at least five months,
16 and so we felt it had to be launched as quickly
17 as possible after the settlement because
18 otherwise, if we would be delayed so long that
19 interest falls off and you lose a lot of
20 momentum, so we suggested that we start planning
21 it very early and be ready to basically launch
22 it as soon as the settlement became final and
23 when, because if we would wait until the
24 settlement, you could see we would be shoved out

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1 at least another five months and it's going to
2 take at least three months after we get the go
3 to put everything in place. We need to hire the
4 people and on and on and on.

5 So it became a very important issue with
6 Art and I so we asked if we could be funded
7 during that period of time to go ahead and do
8 this plan, and we requested that of the law

9 firms, Harry and Rob and Larry, and they agreed
10 that they would fund this up to the time that we
11 were able to, if it became a go, we would be
12 ready to implement the plan.

13 Q. So essentially, you were concerned that
14 if you didn't do anything while we were waiting
15 for an approval or non-approval, that it would
16 be a long time before the results would ever be
17 in because you couldn't get this thing up and
18 running and you requested us to go ahead, if we
19 would, and advance to the project the funds to
20 get things rolling, which included what?
21 Included the computer, payment to the computer
22 people?

23 A. Yes, and, of course, our time involved
24 and also payments to accountants and a lawyer to

□

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1 help us get the documents properly prepared and
2 to do budget and so on and so forth.

3 Q. And so how many people do you understand
4 are in the class?

5 A. The estimates I hear are around 80,000,
6 estimated.

7 Q. And your project, the purpose of your
8 project, if this project is approved, is to get
9 data from how many people?

10 A. Well, we would like to get all 80,000.
11 we don't think that's realistic but we think we
12 can do 80 percent or better, so we're shooting
13 for somewhere in the 60s, if you will, as a
14 realistic target. Of course, we would like to

15 have all 80, if that's how many there are.

16 Q. And we talked in discussions with you
17 and got your feedback and you came up with
18 suggestions about ways to what we call
19 incentivize or cause people to want to
20 participate because not everybody is altruistic
21 and will just jump forward and volunteer for a
22 study, so what did we come up with?

23 A. We came up with a payment of dollars for
24 individuals if they will fill out, if they

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1 qualify and if they fill out the history form or
2 the questionnaire, I guess I should say, the
3 health questionnaire, which is very lengthy and
4 involved, and didn't want to go any further, we
5 would pay them \$150 for that information per
6 individual.

7 If they would agree then, after that, to
8 allow us to or submit the blood sample testing,
9 then we would add another \$250 to it, and the
10 total would be \$400 in a cash payment at the
11 time that they were processed and are drawing
12 their blood.

13 Q. So you felt that if people knew that
14 when they show up, they answer the questions,
15 they would get a blood stick and that they would
16 then get a check, we would have pretty
17 substantial participation if they would be paid
18 on the spot?

19 A. Yes, we thought that was a pretty good
20 incentive to do that.

21 Q. Let's talk about the information that's
22 going to be gathered. It's my understanding
23 that it's basically a health history and a
24 residence and exposure history, meaning what

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1 types of medical problems that people have had
2 or not had and how long they have been on an
3 affected water supply and that sort of thing.

4 what are we talking about for health
5 history and why is that important in a project
6 like this?

7 A. Well, we have to establish, you know,
8 their exposure, for one thing. We have to
9 establish what their health status is in
10 general, have they had any diseases or defects
11 that we need to know about that we can track
12 down, and by collecting this health
13 questionnaire, we should be able to determine
14 the incidence of whatever those diseases or
15 defects are.

16 In other words, if you have a population
17 that the incidence of a disease or defect is
18 maybe one in a hundred thousand and say we study
19 60,000 people in this and we find out that there
20 is 25 people that's got the disease that should
21 only appear one in a hundred thousand in like
22 populations, comparing apples to apples, then
23 you generally say that there's got to be
24 something here that's affecting their health

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1 status, so that's the reason for doing that.

2 And, of course, we have to verify, when we get a
3 positive health status, disease site, we have to
4 go to a medical record, of course, to verify
5 that indeed that did exist.

6 Q. So on that side of the coin, while we're
7 on verifying the medical record, how would that
8 be accomplished?

9 A. Of course, the participant will give us
10 a signature so that we can go to their physician
11 or hospital, wherever that record may exist, and
12 we can look at that record and make a copy of
13 the diagnosis, whether it's supported
14 pathologically or however, so that we have
15 basically absolute proof that they did indeed
16 have that particular problem.

17 Q. So it won't be necessary to gather the
18 whole medical record of the individual, just for
19 the specific disease that the pathological
20 diagnosis or whatever for the specific disease
21 that's in question, to confirm it?

22 A. Yes. For cancer particularly, you have
23 a tissue diagnosis, which is basically a
24 pathology report. If you're looking at say

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1 heart disease or something like that, then you
2 may have to get a little more involved, looking
3 at electrocardiographic changes and/or blood
4 enzyme changes that would support, or cath
5 studies, something like that. You may have more
6 to gather on something like that other than just

7 a pathology report.

8 Q. Now at this point, I want to get
9 something that is probably the most important
10 single issue with regard to this gathering of
11 medical information.

12 will that information ever be released
13 about that patient to anybody?

14 A. No, they will never be able to identify
15 the data, I mean, never be able to take the data
16 and identify a patient with that particular
17 data.

18 Q. How will that be separated?

19 A. Of course, the data will be very well
20 protected, secured. We will have to obviously
21 have an alphabetical listing and we will assign
22 some number to the participant that we will do
23 it in such a way so it will be secure and
24 somebody couldn't go in and try to manipulate it

□

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1 and try to find out who it might be
2 alphabetically.

3 we have to have the alphabetical and
4 demographics on that because as the results come
5 in, we will be able to take the number and we'll
6 know -- when I say we, that will be Art and I, I
7 assume -- will know who those values belong to
8 and then we can notify those individuals of
9 their tests. But from that point on, all of the
10 data is unidentifiable as far as persons and we
11 will keep that alphabetical listing or that
12 roster under lock and key and nobody can

13 approach it.

14 Q. So the source is solely for the purpose
15 of you, as a doctor, and Mr. Maher as one of the
16 co-administrator's and former hospital
17 administrator, to get back to that person if a
18 problem arises which is relevant to that
19 individual person's health?

20 A. That's right.

21 Q. For example, getting over to the blood
22 test side, if you find something that they
23 really need to know, you can get that
24 information back to them?

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1 A. Yes. But we will, of course, notify
2 everybody of their blood test results
3 individually once they're back, but there may
4 be, you know -- so they will get those results.

5 I think that this becomes an issue after
6 the science panel would decide if there is any
7 connection and say that it was based on length
8 and level of exposure, then you need to be able
9 to query the data, find out what individuals fit
10 into that pattern if they deem that to be a
11 problem, and then be able to notify them that
12 you're in a higher risk or whatever than say the
13 other individuals, so they will have to keep
14 that alphabetical list at least for some period
15 of time.

16 Q. But as far as the project is concerned,
17 the names and identities of the participants
18 will never go into the project?

19 A. No.

20 Q. So if people are concerned about
21 confidentiality, they don't have to worry, the
22 project will never know who they are and what
23 disease he's they have as individuals?

24 A. That's correct.

□

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1 Q. Now getting beyond the medical history
2 side to the blood draw side, would you explain
3 what you're going to draw blood for from the
4 people that volunteer to do that and what you
5 hope to find out?

6 A. Well, there's a very long list of
7 laboratory tests. Of course, obviously we will
8 draw a C8 level and then we will draw a battery
9 of blood tests, which includes not only organ
10 system functions of about every organ in the
11 body but there will be other tests on hormones,
12 cancer markers or some prediction on metabolism
13 and so on. So it's a fairly lengthy list. I
14 think it's probably in the number of 50 blood
15 tests that are included. I don't have them all
16 in my memory but we've got them listed out and I
17 think they were listed in the documents for the
18 court.

19 Q. I've got up there on the screen some of
20 the blood tests that are listed in the court
21 documents.

22 Could you just tell the Court and the
23 persons assembled here the significance of that
24 as why you feel these blood tests would be

□

1 important?

2 A. Yes. Without spending a lot of time and
3 not going into the specific tests, you can see a
4 lot of them are self-explanatory. Most people
5 are familiar with most of them. There are some
6 who wouldn't be, but basically this is a very
7 broad screening and I suspect that if most of
8 them could come out of there with no
9 abnormality, we could feel pretty good about
10 ourselves, at least at that point in time.

11 Q. What general types of things are most
12 significant?

13 A. Well, the chemistry studies, you know,
14 that I alluded to shows organ function, liver,
15 kidney.

16 we have a blood count, which obviously
17 monitors blood system. The PSA or the Prostate
18 Specific Antigen is a marker for cancer of the
19 prostate. CEA is another cancer marker that
20 shows a type of cancer to monitor response.

21 CA-125 is the same thing. Then there's
22 thyroid. There's some hormonal studies,
23 thyroid. Insulin levels has to do with some
24 predictability of diabetes.

□

1 There's a growth hormone. That's
2 another hormonal study. That's what makes us
3 grow up the way we do, tall, short, whatever.

4 Testosterone, of course, is a male
5 hormone. I think the other one, I'm having a

6 little trouble over here at the angle. I think
7 the Estradiol is another one. That's a female
8 hormone.

9 Prolactin also is a stimulant for
10 lactating women who are pregnant and who
11 deliver. Prolactin is for lactation of milk.

12 We have immunoglobulins of which are
13 used for allergies, and the ANA is a study
14 that's frequently used for what we call
15 connective tissue diseases, so it's really a
16 very broad testing.

17 Q. Now I don't see, and I need to be sure
18 people understand this, I don't see anywhere up
19 there any drug screens.

20 A. Oh, no.

21 Q. There will be no drug screens of these
22 blood samples, will there?

23 A. Absolutely not. The only tests that
24 will be performed is what is listed there. I

□

92

1 don't think the C8 is on that particular slide
2 but a C8 would be added.

3 Q. So people that have been calling and
4 saying, "Are they going to do a marijuana test,
5 I don't want to participate," or that kind of
6 thing, they don't have to worry, we're not doing
7 drug screens?

8 A. No, and we're not doing any HIV testing,
9 which obviously is required by law that you
10 inform a patient that you're going to do that
11 and get their permission, and there will be no

12 sexually transmitted disease testing done.

13 Q. And nothing is going to law enforcement,
14 they're anonymous for this study?

15 A. That's correct, and there's nothing in
16 there that would force us, by law, to report to
17 the health department or anything like that,
18 like you have with a positive test for say
19 sexually transmittable disease, so we have no
20 reporting requirements to any agencies or
21 anything like that.

22 Q. Now that we're over that hump, we have
23 another hump we have to get over that people
24 have called about.

□

93

1 How many times are they going to get
2 stuck in the arm to get these tests?

3 A. Well, once we hope. Occasionally, you
4 know, you can't tell somebody that you're always
5 going to get it the first time. People, their
6 veins and stuff are different. We will be using
7 a Vacutainer so one stick, and if that's a good
8 stick, we will be able to fill the tubes from
9 that one.

10 Q. So they're not going to get a separate
11 poke in the arm for each one of these tests,
12 they aren't going to get a separate poke in the
13 arm for the C8 test and health test?

14 A. No.

15 Q. If it's a normal situation, they get one
16 poke in the arm and then the vials are taken off
17 of that?

18 A. Right.

19 Q. And they're done?

20 A. Right.

21 Q. On the C8 testing and on this blood
22 testing, have you had some pricing information?

23 A. Yes. We have contacted, in setting up
24 the estimated budget for the hearing, we

□

94

1 contacted a national lab that will do all the
2 tests you see there and we got price quotes from
3 them for each test.

4 And then on the C8 test, I can only find
5 two laboratories I guess in North America that
6 will do those tests, so we have a price from one
7 of them on C8.

8 Q. Is that far and away the most expensive
9 test?

10 A. Yes. As a single test, it is.

11 Q. That can range anywhere from usually
12 over \$200, and if you can negotiate it down,
13 maybe less?

14 A. We hope.

15 Q. And because of the volume, you hope to
16 negotiate even further below that which we have
17 talked about?

18 A. Yes, we would like to.

19 Q. You mentioned LabCorp and other national
20 labs. Why was it that you were interested in
21 getting a national laboratory?

22 A. Well, obviously there's individuals -- I
23 think the first witness from Garden City made

24 reference to there are people that have left the

□

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1 area. I've even got some friends of the family
2 that left the area but were in the district, so
3 these people are probably all over the United
4 States and they may, you know, if they qualify
5 for the health studies study, why, we have to
6 have some way nationally to -- we can't bring
7 somebody from California and draw their blood
8 here so we need a national presence, in other
9 words, to be able to do that and get these
10 people included too.

11 Q. That rolls me into the next area that I
12 think we should discuss for the Court and for
13 the people here, and that's logistically, how do
14 you intend to accomplish this information
15 drawing?

16 A. Maybe it would be easier to just kind of
17 lay out our plan in general. First of all, if
18 and when the settlement becomes final and funds
19 are released to start, we will begin having
20 informational meetings throughout the area,
21 sites to be determined and how many to be
22 determined, so we can give, you know, good valid
23 information to the public so they will know what
24 to expect.

□

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1 We will also have meetings with
2 physicians throughout the effected area so they
3 will understand what we were doing, because when

4 I was in practice, there's nothing more annoying
5 with somebody running in a with lab test and I
6 had no idea where it came from and what it was
7 about and they would be maybe upset because it
8 might be maybe abnormal, so I think it's best
9 that we might spend a little time with the
10 physician community so they would be aware of
11 what's going on and we hope they will encourage
12 these individuals to come in and get this
13 testing done and not be, you know, at least be
14 positive towards it rather than being neutral.

15 Q. Do you feel that your continuing and
16 ongoing relationship with the physicians of this
17 valley and Mr. Maher's relationship will help
18 facilitate that process?

19 A. I believe that to be true.

20 Q. And so basically what you're saying is
21 you're going to ensure that you reach out to the
22 physicians all the way down through Mason County
23 and all the way down through Athens County and
24 so forth who may be called upon to share medical

□

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1 records, who may be receiving medical results,
2 and let them know what's going on and encourage
3 their assistance to the project?

4 A. Right, yes, because they may hear the
5 same rumors you've heard about drug testing and
6 all the other things that's come up, so we want
7 to present that to them so they understand
8 exactly why we're doing it, what we're doing and
9 what kind of information will be garnered from

10 this study.

11 Q. And do you feel that that contact will
12 also reduce the cost of the study because you
13 will be able to more readily get the records
14 that may be necessary to verify that certain lab
15 results are there?

16 A. Yes, if we have their cooperation,
17 obviously it's going to make it a much easier
18 task to accomplish that. There won't be delays
19 and all the other things you run into to get the
20 medical records.

21 Q. And you were talking about, when I
22 interrupted you, about community meetings and so
23 forth. What's the next step?

24 A. After the community meetings, you mean?

□

98

1 Q. Yes, sir.

2 A. Well, we have to do informational
3 advertising, I guess is the best word I know to
4 use. We will put out, you know, have
5 pamphlets. We already have an 800 number in
6 effect and a web page already up, I believe, as
7 of now to launch if the settlement is final.

8 We will be having notices in newspapers
9 primarily, some probably on the TV, and to try
10 to get all the information out that we can,
11 publicizing where we're going to have the
12 meetings, so on and so forth, and other
13 information that's germane to the project.

14 Q. Now with regard to getting out into the
15 community, how are you going to accomplish that

16 so that it's real easy for people to come in and
17 participate?

18 A. Well, we're going to -- in fact, they're
19 in the design phase right now. We're going to
20 place a mobile office or temporary office in
21 each water district, strategically located.
22 These sites have not been determined because we
23 haven't had a chance to really go out there and
24 negotiate anything where to put them.

□

99

1 These units will have soundproof rooms
2 for at least five individuals at any given time
3 so that they can be interviewed or going through
4 their health status form with a nurse and
5 primarily to validate it, if you will, and if
6 there are any questions that haven't been
7 answered that they don't understand, we can
8 complete that.

9 I should back up and say what we would
10 like to do is have all the health status
11 questionnaires filled out electronically before
12 these individuals ever show up at these units so
13 that we can expedite their time there, you know,
14 come in and fill out an hour form and then have
15 to go through it, so we would like to be able to
16 allow them to fill that out at their leisure.
17 We will have that available on a website that
18 they can go in, fill it out and it will be
19 electronically put in our data banks so when
20 they come, all we have to do is punch a button
21 and up it will come, fully populated.

22 Q. People that couldn't do that, that's

23 still not a problem, they just come in?

24 A. No, no, if they can't do that, we have,

□

100

1 of course, all the other avenues. We can do it
2 by telephone or they can come in and we'll do
3 it, you know, there on-site, one on one, but
4 obviously I think most people would prefer to
5 have all that stuff, you know, ahead of time,
6 and we would too because it would expedite all
7 the procedures.

8 So the individual will come in, be
9 checked in by a receptionist type individual,
10 what we call a non-clinical person. They will
11 verify that they've got something in the data
12 bank. We will verify their eligibility for the
13 study through documents, but first we would use
14 the Garden City list, and if they're on that,
15 why then they would have a photo ID or something
16 that would confirm that they are indeed the
17 individual, some kind of an ID that we could
18 determine, yes, they are on the Garden City
19 list.

20 If they're not on the list, then we
21 would have to use other means such as a tax
22 return, drivers license, affidavits and so on,
23 to get them in.

24 Q. In each instance, the person will state

□

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1 under oath that he or she was on the water
2 supply for a year or more?

3 A. That's correct.

4 Q. And there will be a statement on the
5 form that if they make that statement and it's
6 false and they thereby obtain money, that they
7 are in violation of the law in West Virginia of
8 obtaining money under false pretenses and they
9 can go to the penitentiary or jail. So they
10 will know what when they fill that out, won't
11 they?

12 A. Yes, and they will also be asked to sign
13 for release of medical records at the same
14 time.

15 Then there will be a photograph taken,
16 an initial photograph of that individual. They
17 will then be taken into a soundproof room with a
18 computer screen and go through the health form
19 and then they will be asked, "will you submit to
20 the blood test".

21 If they do, then we'll draw their blood
22 and they get a check on the way out the door.
23 If they don't submit to the blood test, they
24 leave at that point and still get a check as

□

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1 they're going out the door.

2 Q. So your hope is with this team, that it
3 will encompass six locations, that people, over
4 a course of time, you can expeditiously get this
5 estimated 80 percent of the 80,000 people
6 hopefully through the doors and processed?

7 A. Yes. We're looking at even trying to
8 block schedule, if you will, so that we'll have

9 broad hours to collect. We're not going to be a
10 8 till 5 operation. We'll have enough broad
11 hours for people that work and hope they can fit
12 it in their schedule, but we'll try to look at
13 mapping to see if we can block schedule.

14 Say if we can determine a certain number
15 of the alphabet, we could tell those
16 individuals, "Hey if your last name begins with
17 A, you come in between 10 and 11," or whatever,
18 and that way, hopefully we'll make it very
19 convenient for people and there won't be a
20 thousand people lining up at the door at 10:00
21 and have to wait several hours or maybe even not
22 get through, so we want to try to do things that
23 make it real user friendly, if you want to use
24 that term.

□

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1 Q. Now in my discussions with you, you
2 indicated that you will first be processing the
3 people that you have the names of and get the
4 routine down and you're going to find out what
5 times are most convenient, so if, for example,
6 the after work time is most convenient, that's
7 when you'll schedule your people, is that your
8 plan?

9 A. That's correct.

10 Q. So people don't have to worry about
11 leaving work to come in, we're going to try to
12 schedule it so they can go on the way to work or
13 on the way home or whenever is convenient for
14 them?

15 A. We plan to have at least some weekend
16 hours too, at least on Saturday, a few hours on
17 Saturday, so if people are out of town during
18 the week and so on, so we'll try to make it more
19 convenient.

20 Q. And the way you've planned it to this
21 point, and all of it is subject to change as
22 circumstances warrant, I understand, because the
23 idea is to get the job done no matter what it
24 takes, but your pre-plan is to staff these

□

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1 stations 46 hours per week?

2 A. Something in that range. That's what we
3 initially think. Of course, that may be subject
4 to some change. Some may have to go longer,
5 depending upon the population and how people
6 are, you know, coming in, and others could be
7 maybe shrunk down a little bit, I don't know.
8 We'll just kind of have to play that by ear as
9 we go along.

10 Q. Then you will also have a central
11 administrative office which will include the
12 training rooms and so forth?

13 A. Yes.

14 Q. How are you going to get these people up
15 to speed? It sounds like you're going to have a
16 lot of people and they will have to be trained
17 to do specific tasks. How are you going to
18 accomplish that?

19 A. Well, if we don't have a central office
20 with a training room, we'll get a training room

21 some place, and we think we have to have a work
22 force probably, because we'll be using part time
23 people, most of them, using nurses, so we have
24 to have, if we run all six at full capacity, we

□

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1 will have to have 30 nurses working at any given
2 period of time, so we think our pool probably
3 needs to be 70, 80 available, because a lot of
4 them will work full time at a hospital or
5 doctor's office but then come in and fill in
6 hours in the evening just for the extra, so we
7 need a large pool and we got to train these
8 people, so we plan in the first 60 to 90 days
9 after we have the word go, to be hiring these
10 people and having training sessions.

11 we will, in this room, we'll bring in as
12 many as comfortably possible and put them
13 through the training on the information systems
14 and what they're to do, the ones that draw
15 blood, so they'll be very familiar with
16 protocols and so on and so forth, and we'll have
17 to train all these individuals during that
18 period of time to be ready to go in 60 to 90
19 days.

20 Q. Is this the type of set-up that's
21 similar to what you and Mr. Maher had to do for
22 your respective hospitals, get staffing, get
23 medical records, get things going?

24 A. Yes, pretty much.

□

106

1 Q. So this wasn't an out of the ordinary
2 thing for you and Mr. Maher to conceptualize, it
3 was something that's within your realm of
4 training and definitely your realm of
5 experience?

6 A. I believe so.

7 Q. Just briefly, you have a chart on the
8 qualifying of the study members. It's just a
9 flow chart. I just wanted to briefly have you
10 explain how the process is going to work.

11 A. Well, of course, any individual people,
12 if we do electronic like Internet, of course
13 they could fill out the form or they could bring
14 a form in however it was gotten and then we
15 could determine if they qualified by some proof
16 that they had been exposed to the contaminated
17 water for at least one year.

18 If they're not qualified, then they're
19 not qualified and that's the end. If they are
20 qualified, then they go into the review of
21 medical information, and if they say, "I don't
22 want blood drawn but I had cancer," or whatever
23 the disease was, then we still would go off,
24 obtain their medical records. And also there's

□ 107

1 been several names already submitted from
2 relatives of people who are deceased and so
3 we'll need to look at some deceased records, if
4 we can find them, you know, and see the evidence
5 for them.

6 Q. Is that important because the basic

7 obvious reasons, some diseases that may be
8 implicated are fatal?

9 A. Yes.

10 Q. And if we don't find the diseased
11 people, those people will be eliminated from the
12 population?

13 A. That will be correct, so we're going to
14 try to do that. And after they draw blood of
15 the living group and if there's no reported
16 disease, if there wasn't any reported disease in
17 their history or information, then they're over
18 in the pool of that.

19 If there is a report of disease, then we
20 bring them down, obtain their medical records.
21 Then all of that, the C8 exposure level, all of
22 that information then will be in the data bank
23 and then it will be given to the science panel
24 to evaluate it.

□

108

1 Q. Now the C8 level in the deceased people,
2 obviously we can't do a blood draw now, but do
3 you believe, based upon your discussions with
4 computer people and epidemiologists, so forth,
5 toxicologists, that when you gather the C8
6 information about all the living people in the
7 population, their avenue of exposure, their
8 length of exposure, that if you have the water
9 supply information and the length of exposure to
10 water supply on the deceased people, they will
11 probably be able, the scientists should be able
12 to come up with a pretty good idea of what that

13 person's blood level was as well?

14 A. Yes, I think they should be. You would
15 reasonably think that they could predict, you
16 know, using a living subject with the levels
17 that they could, and if that dead individual or
18 deceased individual had the same exposure or
19 same level or in the same system, that you could
20 reasonably expect that they had, you know, the
21 same type of exposure over the period of time,
22 even though you couldn't draw, or that their
23 level would be the same, although you would not
24 be able to get it obviously.

□

109

1 Q. Now as an administrator, I assume that
2 you have experience with budgets, so we asked
3 you to calculate how you were to accomplish it
4 with regard to dollars so the Court would have a
5 general idea of how the money was proposed to be
6 spent to accomplish the tasks which we hope is
7 assigned to you.

8 I've put up the tentative figures which
9 you have provided to me and I just want to
10 briefly go over that so that the Court and
11 persons who are interested will have a general
12 idea of how this will be.

13 As I understand it, if, for example, the
14 participation rate is low and you need more
15 contact dollars, then you will have to divert
16 more dollars to getting people in and so forth,
17 but this is a general snapshot of the direction
18 you're headed, correct?

19 A. Right.

20 Q. If you would, just kind of outline
21 that. How do you get the cash to participants,
22 that's based upon the pay-outs of 150, 250 or
23 \$400?

24 A. Well, we used the 400 number. We didn't

□

110

1 try to say a percentage that wouldn't give blood
2 so we just used a 400 number up there, and I
3 think that number comes out to approximately
4 65,000 individuals for the cash payment.

5 Q. So that's estimated to be, if everything
6 goes as well as we would hope, that's estimated
7 to be roughly \$26,000 cash payments throughout
8 the individuals?

9 A. Twenty-six million.

10 Q. Excuse me, twenty-six million. That's
11 only three zeros off?

12 A. Only three.

13 Q. Then the lab fees?

14 A. Well, the lab fees encompass the
15 estimate that we received from the two
16 laboratories, one for C8 and the other for all
17 the other blood tests that would be done.

18 Q. And those numbers, again, are flexible
19 because of that, if you can negotiate it and get
20 it lower, you will get it lower?

21 A. Right.

22 Q. And if that's the case, you'll be able
23 to accommodate more people?

24 A. Right.

□

1 Q. And you understand if the Court approves
2 it in its current proposed format, that if the
3 program runs out of money, then that's the end
4 of the program?

5 In other words, we examine as many
6 people as we can and when you run out of money
7 to examine people, that's the end of the
8 project, if it goes that route?

9 A. Yes, if it goes that route.

10 Q. And then if you get everybody examined
11 that wants to be examined, everybody that wants
12 to participate, and there's a residue, that gets
13 paid to the participants on the tail end?

14 A. Correct.

15 Q. All right. Just so everybody knows
16 where we are there.

17 Then the next item is Cost of Locating,
18 Communicating with and Reporting to
19 Beneficiaries.

20 what are we talking about in
21 communicating and reporting to beneficiaries?

22 A. Well, we'll need to send a notice
23 whenever we, as many as people as we can list,
24 send them another notice, and if we get to a

□

1 point where that we're not reaching the numbers
2 that we expect, we want to be able to basically
3 use whatever resources we have to get people in,
4 if that means personal contacts, going door to
5 door, whatever, so we wanted enough money in

6 that particular line to have that available, if
7 it's needed.

8 Q. So if we need to pay somebody, in your
9 project, if you need to pay somebody, let's say
10 you get 40,000 people in and you want to get
11 another 20,000 people in, you need to pay
12 somebody to start calling in the neighborhood,
13 getting neighborhood people, hire them to call
14 and get that done, you have a budget line item
15 for that?

16 A. Yes, we do.

17 Q. And you talked about notice, down at the
18 bottom, item number 30. If the project has to
19 pay for an additional official notification, you
20 have got that as an eventuality in there too?

21 A. Right.

22 Q. Now the next four, five and six are the
23 staffing numbers, and so that's your nurses and
24 your non nurses?

□

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1 A. Right.

2 Q. And those people. And then seven, and
3 those add up to it looks like roughly four
4 million dollars or so.

5 And then you've got Information
6 Systems. That we'll get into with Mr. Young in
7 a little while, but that's basically the
8 computer side of it?

9 A. Right.

10 Q. Why is that important?

11 A. Well, obviously that's the only way we
Page 91

12 could reasonably store information, and we want
13 everything to be real time so that all the
14 offices, the portable offices are all connected
15 up to our data banks and also accounting
16 information is fed into the bank, United Bank,
17 because they will be, you know, doing the
18 checks, the checks will be drawn on them for the
19 participants, so it all has to be tied together.

20 Q. So it's a pretty big computer system?

21 A. Yes, it's a really big computer system
22 and all this data will have to be poured into it
23 rather quickly.

24 Q. And you've got administrative office

□

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1 staff in a central office, the office rent,
2 utilities, telephone and so forth. I assume
3 you've done estimate on all of those?

4 A. Yes, we've run estimates on everything
5 there.

6 Q. And then we talked about information
7 meetings with physicians. You've plugged in
8 \$25,000 for that. I think it's kind of
9 important to point out why we have that number
10 in there, because of the sheer volume of people
11 you're trying to get together and how difficult
12 it is sometimes to try to get everybody in one
13 place?

14 A. Well, we'll have to have probably
15 several meetings in several different areas, you
16 know geographical areas, because we wouldn't
17 want someone in Mason County to drive to

18 Parkersburg or vice versa, so we'll have to have
19 several meetings in each area and invite the
20 medical staffs in those areas to come.

21 Ordinarily you have to rent a room and
22 you have to usually have some type of
23 refreshment and things usually in the evening.

24 Q. Basically we work on the Salvation Army

□

115

1 principle there. You got to feed them there
2 before you preach to them?

3 A. Well, sometimes.

4 Q. So in essence, it may entail, if you
5 have to, have a dinner to get the physicians
6 there because they are such a critical aspect of
7 this thing?

8 A. Yes.

9 Q. And then the same thing, public
10 meetings, you'll have to rent facilities, have
11 refreshments and that sort of thing?

12 A. Correct.

13 Q. Okay. And then we've got advertising
14 and public relations. That's essentially
15 letting people know the answers to the questions
16 that they've been calling me and you and
17 everybody else about, so that we can courage
18 participation. That's what we're talking about
19 there?

20 A. Yes, correct.

21 Q. And then there is insurance, taxes. The
22 insurance, I assume, is an estimate and the
23 taxes are also an estimate based upon what you

24 and your team and the accountants have been able

□

116

1 to come up with?

2 A. That's correct, yes.

3 Q. You guys have put a lot of time in this
4 so far, haven't you?

5 A. A good bit.

6 Q. I thought you were retired.

7 A. I was.

8 Q. Then we've got office furniture, office
9 rent, mobile office site rent, and all those.

10 You've kind of described what those are already.

11 A. Yes.

12 Q. Legal and accounting. With regard to
13 legal and accounting, now we, the plaintiffs
14 attorneys, are not your lawyers, are we?

15 A. No.

16 Q. And there are confidentiality documents
17 that have to be prepared, contracts with the
18 LabCorp and other people, contracts with the
19 people you're going to rent property from,
20 contracts with GE, if GE is going to build these
21 buildings, that's where the legal and accounting
22 part comes in?

23 A. Right.

24 Q. And then we've got medical record

□

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1 retrieval. Now I know, as a lawyer, how much it
2 costs to get medical records because we've got
3 to do it all the time, but basically that's an

4 estimate of how much it's going to cost to get
5 the back-up records to prove that the person
6 really had what he or she said they had?

7 A. That's correct.

8 Q. And then there's --

9 A. And that number is based on a previous
10 study when people answer the questionnaire, they
11 had about 15 percent or thereabouts, 14 percent,
12 you had to look at their medical records, 14
13 percent of them, so if you take 14 percent of,
14 and I think for this particular purpose, we used
15 the 80,000 number, and then you multiply a
16 hundred dollars per record. I was kind of
17 astounded basically but we have information from
18 people who secure medical records that that's
19 the price they basically charge for getting an
20 average record, so it's a good number.

21 Q. A lot of these numbers are big because
22 of the sheer volume of the numbers we're talking
23 about?

24 A. That's correct.

□

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1 Q. And the next one down there is the
2 Settlement Fund Administrator, and that's an
3 estimate of the cost of the person who is going
4 to respond to the Court and make sure that this
5 project does what the Court has ordered to be
6 done and that everything is done as it's
7 supposed to be?

8 A. That's correct.

9 Q. And then in addition to that, we've got

10 the bank fees, which the bank will discuss,
11 travel.

12 You want to just explain why there's a
13 travel item in there?

14 A. Well, at least one of the vendors at
15 least we will need to visit before we do any
16 contractual work with them. I think it's
17 important when vendors are doing testing that
18 you have a look at their facilities. You know,
19 you're not buying something in the dark, so-to-
20 speak.

21 Then we'll obviously have to have travel
22 around these six different offices by staff and
23 that's the reason for that number.

24 Q. So during the course of however long

□

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1 this takes, there will be a lot of mileage for
2 people throughout the organization?

3 A. Right. We won't be paying people to go
4 there and actually work but we'll be paying
5 administrative people to go out and take care of
6 problems or whatever.

7 Q. I skipped over one other. There is a
8 fee for an auditor for the settlement fund and
9 the Settlement Fund Administrator.

10 Is this something that you felt was
11 appropriate because of the fact that when you're
12 talking about 70 million dollars, it shouldn't
13 be just one person keeping an eye on it, that
14 there should be one person that's appointed by
15 the Court but then have an official auditor to

16 audit that and make sure --

17 A. Yes, we felt that was in the best
18 interests of everybody to do that.

19 Q. And then the other things, hazardous
20 waste disposal, I guess from the hospital, you
21 have a pretty good idea of what it costs to get
22 rid of the needles and so forth.

23 The contingency, in case we haven't
24 thought of something, and it's important to

□

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1 emphasize that to the extent that the project
2 doesn't necessitate the use of these funds, they
3 all go back to the residual will get paid to the
4 participants?

5 A. Right.

6 Q. Is it your intention to make this as
7 cost effective as you can? In other words, if
8 you can get it done without spending all the
9 money, you're going to do it?

10 A. Absolutely.

11 Q. So that they'll have that residual.

12 How long will this project take?

13 A. Well, if we can process the
14 participants, and we've done some time studies,
15 we think that we can do this within a year from
16 start to finish. If the flow of the
17 participants are such that we can meet our goals
18 of processing them, then we should be able to
19 complete it in a year.

20 Q. If you can't complete it in a year, are
21 you going to keep working?

22 A. Well, if the time comes that we've
23 exhausted all means to get people in, we've gone
24 door to door, we've hog-tied them, we've sent

□

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1 cabs after them, we've done everything we can
2 think of and we're still seeing one a week, then
3 we'll come back to the Court and petition that
4 the study be stopped at that point in time.

5 Q. So at that point, we would notify the
6 Court that we intend to terminate the project
7 and ask the Court's approval?

8 A. Right.

9 Q. To approve that. Yes, you've done all
10 that you can do as per the project, and then at
11 that point, the residuals would be paid out and
12 only at that point?

13 A. That's correct.

14 Q. Back to my other question, if it takes
15 more than a year and you're still drawing in
16 those people every month, you aren't going to
17 quit at the end of a year, are you?

18 A. No, we'll continue as long as, you know,
19 it seems to be the proper thing to do. I mean,
20 I think that's sort of a subjective call at that
21 point, you know, when you come back and say hey,
22 you know, we're not doing enough to make this a
23 reasonable thing to be doing.

24 Q. But at this point, you really don't know

□

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1 how long it will take. Your plan is to do the
2 best that you can to get this project done and

3 get everybody participating that can reasonably
4 be convinced to participate?

5 A. Well, the time studies would indicate
6 that if the flow is there, we can process the
7 numbers that we're talking about within a year,
8 assuming that we can keep the flow.

9 If the flow goes down, then obviously we
10 can't meet our goals of processing, but if it
11 doesn't, we can complete it in a year, I'm
12 pretty confident.

13 Q. Just so there will be no doubt about it
14 in our auditing and so forth, the money which is
15 being advanced and will continue to be advanced
16 so that you can get this going for those people
17 as soon as the Court approves it, if the Court
18 approves it, or as soon as it can be started,
19 that money, if the Court doesn't approve it or
20 something falls through, that comes out of the
21 attorneys' pocket, right?

22 A. Right.

23 Q. But if the Court approves it, the money
24 that's spent on the project, not on case costs,

□ 123

1 not on expenses of the litigation, that sort of
2 thing, but the money that was spent on your
3 project, you're going to reimburse to the
4 attorneys?

5 A. Yes.

6 Q. If the Court approves it?

7 A. If the Court approves it. Because it
8 would have to be used, and we talked about the

9 extended delay, and this way, we believe within,
10 based on what our vendors tell us, that they
11 could have most of the things in place between
12 60 and 90 days, and we think we can be up and
13 running because of all this pre-planning that's
14 been done over the last five months or six,
15 whatever it's been now.

16 Q. And if those costs weren't extended, it
17 couldn't be done on that time table?

18 A. No.

19 Q. What do you hope to accomplish with this
20 project? Why do you think it's important?

21 A. Well, I think it's important that,
22 number one, we determine scientifically what
23 effect that the C8 has had or would have in the
24 future on the health status of these individuals

□

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1 that have been exposed.

2 And secondly, with such a large group of
3 individuals and such a broad testing, I believe
4 that the benefits from that too will benefit
5 this community in the future as it looks at its
6 health status.

7 Q. Has anything of this depth or magnitude
8 been done, to your knowledge, on the health type
9 of study anywhere in the world?

10 A. Not to my knowledge. There has been
11 large studies done with maybe one, two, three
12 tests or something like that, or maybe even
13 more, but nothing of this magnitude and this
14 number.

15 Q. So when we're talking nothing
16 comparable, there may have been large
17 cholesterol studies, there may have been large
18 studies for individual things but nothing of
19 this substantial magnitude with regard to the
20 broad screen of possible health affects anywhere
21 that you've ever heard of?

22 A. Not to the best of my knowledge.

23 Q. When this is finished, the people who
24 participate, obviously they remain anonymous

□

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1 forever, but the numbers, the data, the number
2 of cancer cases in the population, for example,
3 the number of birth defects or whatever, that
4 data is a commodity, it's a project and
5 information that universities throughout the
6 world might find important. Is that your
7 assessment of it?

8 A. Well, I think it would be a gold mine,
9 basically looking at it from that aspect, that
10 people would want to or individuals that have
11 those interests, epidemiologists, toxicologists,
12 whatever it would be, would be interested in
13 looking at a data bank of this magnitude and
14 seeing if they could derive certain things from
15 it, not only what we're looking for is to
16 determine the C8 situation, but all the other
17 processes, disease processes that could be
18 involved, it would be an enormous amount of
19 information.

20 Q. So do you think that the information,
Page 101

21 the total information that is gathered in this
22 project would benefit the class membership if
23 that information is in the public domain so that
24 any university in the world, any scholar in the

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□

1 world can look at the numbers and the findings
2 and maybe come back with additional conclusions
3 that may help this population and may help
4 people throughout the world?

5 A. I think so. I would believe that to be
6 true.

7 Q. So is it the plan that when the health
8 project is concluded, that the data, not the
9 identification, the identification never comes
10 out of the individuals, but the data, the
11 statistics, that they will be placed in the
12 public domain and not hidden so that not only
13 the epidemiological panel for this case can look
14 at it but epidemiologists from all over the
15 world can look at it and see what conclusions
16 can be drawn?

17 A. That's my understanding. I think that's
18 where it should remain, the data.

19 Q. So nobody is going to profiteer off of
20 it after it's done? You and Mr. Maher don't get
21 the data and sell it to somebody, it goes in the
22 public domain for use by universities and
23 scientists wherever they are?

24 A. That's correct.

□

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1 MR. DEITZLER: I have no further
2 questions, Your Honor. I don't know if
3 Mr. Janssen does.
4 MR. JANSSEN: No questions.
5 THE COURT: Dr. Brooks, thank you so
6 much for your learned disposition. It seems
7 like an enormous project. I thank you.
8 Do you have other matters you want to
9 present?
10 MR. DEITZLER: We have three more
11 witnesses.
12 THE COURT: We'll do them later, right?
13 MR. DEITZLER: I'll do them whenever the
14 Court says appropriate.
15 THE COURT: I think some people may be
16 getting hungry. I don't know.
17 We'll recess until 1:30.
18 MR. DEITZLER: Thank you, Your Honor.
19 THE COURT: Thank you.
20 (Noon recess taken.)
21 THE COURT: Ready to proceed?
22 MR. DEITZLER: Yes, Your Honor. Call
23 Troy Young.
24 (Witness, TROY YOUNG, sworn.)

□

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1 DIRECT EXAMINATION
2 BY MR. DEITZLER:
3 Q. Tell the Court who you are and what your
4 profession is.
5 A. My name is Troy Young. I'm the Chief
6 Technology Officer and Executive Vice-President

7 of two companies, CPR Solutions Group and Health
8 Study Systems in Charleston, West Virginia.

9 Q. With regard to the project which you've
10 heard discussed throughout the morning, what
11 have you been employed to do if the project is
12 approved?

13 A. To provide all the technical aspects of
14 operations when it comes to collecting the data
15 from participants, securing the data, ensuring
16 that data is not accessible by anyone who's not
17 allowed to see it, as well as managing and
18 recording on that data to the appropriate
19 parties.

20 we'll be also maintaining the accounting
21 software system for the appropriate people to
22 distribute the funds to the participants. We
23 will also be taking certain measures to deter
24 any fraud that could happen from people who are

□

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1 not eligible but try to be eligible. And we'll
2 be supporting all the infrastructure hardware
3 and software when it comes to the technology
4 related aspects of the project.

5 Q. Now in summary, would you tell the Court
6 why you're qualified to do that and in just
7 brief form how you're going to do that?

8 A. I've been working in technology for the
9 past 13, 14 years and have extensive experience
10 in both short and long term projects and
11 managing network technology infrastructures for
12 companies, banks, health care.

13 One of our companies, CPR Solutions
14 Group, provides services to physicians who use
15 electronic medical records, and more
16 specifically related to this project, bring lab
17 results back into the system electronically and
18 be able to record all of them.

19 With this volume of participation we're
20 anticipating, that was a vital very important
21 part of the project.

22 I've also had a lot of experience with
23 regards to network security, HIPAA related
24 transactions and anything necessary to secure

□

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1 that data and ensure that it's not viewable by
2 anyone who's not allowed to.

3 Q. And your company, just give a summary of
4 what your company is.

5 A. We're a Charleston based regional firm.
6 we've got about 11 employees. We'll be bringing
7 in couple more to help with the project of this
8 size.

9 Our backgrounds are primarily in
10 installing, maintaining mid range accounting
11 software systems, practice management of
12 electronic medical records, document imaging
13 and, of course, all the network and technology
14 that goes into supporting those platforms.

15 Q. The professional services that you're
16 going to provide specifically on this project?

17 A. We are going to be custom developing
18 some software to interact with off-the-shelf

19 products, so-to-speak, in order to accomplish
20 the task.

21 It's a little bit different from what we
22 do day-to-day but it's very similar, so we do
23 have to make some custom programming
24 arrangements.

□

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1 We will be implementing and supporting
2 all of the technology pieces when it comes to
3 the software, training the end users on how to
4 use the software as well as providing the
5 accounting software training and support
6 services, and we'll be reporting and consulting
7 on that data as well.

8 Q. Now you heard Dr. Brooks testify earlier
9 as to how the data would be gathered and
10 compiled.

11 Are you the one that's going to handle
12 the computer side of all that?

13 A. Yes.

14 Q. And you heard him describe the surveys
15 and the initial gathering of information for
16 surveys and how that will be done. What's your
17 part on that?

18 A. There is a company that's been selected
19 from Burlington, Vermont called ARC Micro.
20 Their background is in market research and data
21 collection, more specifically behavioral risk
22 factor surveys.

23 They will be collecting the data in
24 three different manners. One, electronically by

□

1 Internet website; two, by telephone surveys; and
2 the third option is by mail, where participants
3 will have to fill out a form and mail it back.

4 This company will provide all that data
5 electronically back to me securely. Again, for
6 this volume of data, it's a very important
7 factor in this.

8 Q. Will you be able to tie all the
9 locations together? And if so, how will you do
10 that?

11 A. Yes. As Dr. Brooks stated earlier,
12 there will be six remote locations, a management
13 office in Parkersburg that will be connected
14 back to our office in Charleston where we'll
15 house the data center and manage the software
16 applications and support centrally from there.

17 Q. You talked briefly and mentioned
18 security. What do you have to do for security
19 for a project like this?

20 A. Well, you have one aspect is physical
21 security, where you have to have proper security
22 systems in place on the building and the rooms
23 and so forth where the data is housed.

24 You also have network security, whether

□

1 it's internal personnel or external people being
2 hackers or people of that nature from the
3 Internet attempting to break in and access
4 either the data or even the accounting systems
5 data and account numbers, things of that nature.

6 Q. How are you going to make sure that the
7 data is always backed up and protected?

8 A. We have several safeguards in place for
9 that. We have several different methods of
10 fault tolerance in place for hardware failures
11 to ensure reliability and availability.

12 we also have all the current
13 technologies in place for firewall protection
14 and antivirus protection from the Internet and
15 from internal users, and as well as all the
16 proper HIPAA procedures and any data that's
17 electronically transmitted will be properly
18 encrypted using today's standards.

19 Q. So you actually do this for hospitals
20 and doctors anyway?

21 A. That is correct.

22 Q. So you know how to keep the security?

23 A. Correct.

24 Q. What happens if your place burns down?

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1 A. That data is backed up on a daily basis
2 and taken off site. There's a company that
3 we'll be using in Charleston who will pick up
4 the tapes from us every day and take them off
5 site and maintain security over those tapes for
6 us.

7 Q. Now if somebody steals one of those
8 tapes, can they read the data?

9 A. No, those tapes are secured with a
10 password and even if somebody obtains the tape,
11 they cannot restore the data off the tape.

12 Q. Your building security, how do you do
13 that?

14 A. We have actually three different forms
15 of security. One will be video camera; two will
16 be a standard electronic alarm system, and the
17 third will be plyometric locks where only
18 certain people who have fingerprints can open
19 the lock to the door where the data is stored.

20 Q. So you'll have certain identified people
21 whose fingerprints are necessary to get into
22 that room?

23 A. Correct.

24 Q. How many people?

□

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1 A. Three.

2 Q. Now you're the main guy running this,
3 right?

4 A. Yes.

5 Q. What happens if you die?

6 A. The other two will have -- everything
7 will be heavily documented and my business
8 partner, as well as one of the employees, will
9 have access to that information as well.

10 Q. Now you understand that Dr. Brooks is
11 going to want you to be able to not only gather
12 all the data, but also have software to do
13 correlations so they can be compared?

14 A. Correct.

15 Q. Will you be able to identify trends and
16 clusters on health issues?

17 A. Correct, through the use of the
Page 109

18 reporting.

19 Q. So in addition to being able to report
20 the raw data, you'll be able to run it through
21 software and find any mathematically calculated
22 correlations between one variable and the other,
23 such as duration of blood exposure to disease
24 process or duration of residence to blood level

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1 or whatever?

2 A. That is correct.

3 Q. Would this type of calculation with
4 regard to 60,000 or so people and all the
5 possible variables being compared, would that
6 even have been possible 25 years ago?

7 A. Probably not.

8 Q. Is that because of the advancement in
9 computers to where they can handle a significant
10 higher number of comparisons than they could
11 back when they first came out?

12 A. Yes, advances in hardware and software.

13 Q. All right. Dr. Brooks and Art Maher,
14 will they have real time access to the data?

15 A. Yes, they will.

16 Q. Will they be able to change any of the
17 data?

18 A. No.

19 Q. So will all the access to the data be
20 read only?

21 A. Correct.

22 Q. Meaning that anybody that views the data
23 during the process can't change the data, they

24 can just look at it?

□

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1 A. That is correct.

2 Q. Will you be able to do periodic reports
3 of the statistics?

4 A. Yes.

5 Q. Will you be able to report the
6 identification of the people in those
7 statistics?

8 A. No.

9 Q. Will you have checks and balances for
10 spotting corruption of data or inappropriate,
11 unexpected changes in data?

12 A. Yes. We'll be using weekly reporting to
13 try to spot any trends, so if someone doesn't
14 follow proper protocol of handling of the blood
15 and it results in skewed results that are very
16 off base from every other week, then we'll be
17 able to recognize that very quickly.

18 Q. So if somebody is not doing what they're
19 supposed to and there's a chance of that messing
20 up the data, one, you can identify that that's
21 occurring, and two, you can identify the record
22 where it's occurred?

23 A. Yes, and even down to the level of who
24 took the blood.

□

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1 Q. Will there be pre-screening of the
2 employees for potential conflicts of interest
3 with DuPont or the plaintiffs and potential

4 conflicts with regard to credibility, such as
5 criminal background checks?

6 A. Yes.

7 Q. And that's two different things, you
8 understand?

9 A. Yes.

10 Q. And you've discussed that with
11 Dr. Brooks and Art Maher?

12 A. Yes.

13 Q. Is it possible that with the computer
14 programming that you have, that the people who
15 run this program might spot correlations that
16 they didn't even think of?

17 A. It's possible.

18 Q. Now Dr. Brooks mentioned that there was
19 a way that people can already sign up so that
20 Dr. Brooks and Art Maher and their team can
21 reach them if they're not on the mail list. Has
22 that been arranged for?

23 A. Yes, we have established a toll free
24 number and a website where people can register

□

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1 basic information to be put in a que.

2 Q. It's a little primitive there but is
3 that the number?

4 A. Yes, it is.

5 Q. So if people want to call that haven't
6 received a notice and they read about it in this
7 widespread media coverage that it looks like we
8 have on the first row here, if they put that
9 number in their media coverage, 800-605-6850,

10 somebody can call that number and what will
11 happen?

12 A. They will be prompted to answer several
13 questions and that information will be recorded
14 and those people will be put in a que to be
15 called back.

16 Q. Now it will also tell them they're not
17 going to get a call back until this projects is
18 under way, so it might be several months or
19 whatever it takes?

20 A. That is correct.

21 Q. And when you say they're asked several
22 questions, these aren't probing questions,
23 aren't they? What is it, it's name?

24 A. Name, address, city, state, zip code,

□

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1 phone number and e-mail address if they would
2 like to give it.

3 Q. And e-mail address is strictly optional,
4 but if they want us to call them back or write
5 them, if they call that phone number, Dr. Brooks
6 and Art Maher will be aware and they'll get that
7 list of names and addresses?

8 A. That's correct.

9 Q. And if they want to come in on the
10 Internet, if they're more technology advanced
11 than me and want to communicate by Internet, is
12 there a website?

13 A. Yes, there is.

14 Q. And so they can go to
15 www.C8healthproject.com?

16 A. Correct.

17 Q. And get the same, get themselves into
18 it?

19 A. Exactly.

20 Q. And if they make a mistake and say
21 www.c8healthstudy.com, will they still get in?

22 A. Yes, it goes to the same place. There's
23 about 12 or 16 variations of the website
24 registered to ensure reachability.

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1 MR. DEITZLER: That's all the questions
2 I have.

3 THE COURT: Do you have any?

4 MR. JANSSEN: No.

5 THE COURT: Thank you very much.

6 MR. DEITZLER: Next witness would be
7 Larry Salyers.

8 (Witness, LARRY SALYERS, sworn.)

9 DIRECT EXAMINATION

10 BY MR. DEITZLER:

11 Q. Would you tell the Court and the people
12 in this room who you are.

13 A. My name is Larry Salyers. I'm a market
14 President with United Bank. I have the
15 ancillary responsibility of managing the bank's
16 cash management activities throughout the State
17 of West Virginia.

18 Q. I understand that you have put together
19 a plan for the handling of the money of the
20 settlement if the settlement is approved?

21 A. That's correct.

22 Q. Could you describe for the Court what is
23 proposed?

24 A. A few bullet points first about United.

□

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1 Of course, the folks in this room may or may not
2 know that we're the largest bank that's based
3 here in West Virginia. We're also the largest
4 publicly traded company in the state. We have
5 52 offices throughout the West Virginia so it
6 provides good accessibility, a large number of
7 employees.

8 Q. Now for your accounting activity, what
9 are you going to do?

10 A. The first part, as the funds are
11 delivered to United Bank, whether it's
12 electronic or how, they will reside in United
13 Bank's trust department and those funds will be
14 invested according to a certain liquidity
15 schedule, then transferred to a funding
16 account.

17 Go to the next, hit the next one there.

18 The two accounts you're seeing there,
19 the master account will fund the administrative
20 expenses which we've talked about so far today,
21 paying for overhead and so forth.

22 The claims processing account which you
23 see will also be funded by the master account as
24 needed. It will be to pay those folks or

□

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1 participants in the plan.

2 Those are both zero balance accounts,
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3 which basically mean that they will be funded as
4 required. The funds won't necessarily go to
5 those two accounts until they're called upon to
6 fund those two activities. The funds that
7 aren't funding will be put overnight, we sweep
8 those overnight, we collateralize them because
9 more than likely, those funds will exceed the
10 FDIC coverage paid investment return.

11 And then as those two accounts, the
12 administrative accountant and the claims
13 processing account, issue checks, the
14 administrative electronic file will be sent to
15 United Bank. Now we're custom doing this quite
16 often for large organizations and so forth.

17 Electronic files, as often as checks are
18 issued, their read-only information file is
19 transmitted to United Bank. We hold that file
20 until such time as those checks begin to clear
21 from the Federal Reserve.

22 Q. Now before we go further, basically are
23 we saying that whatever money is needed at any
24 given time to fund the immediate expenses of the

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1 project, that will be in one account, will be
2 moved to one account, but the rest of the time
3 all the money is invested?

4 A. That's correct. Depending on the number
5 of participants, it can be anywhere from three
6 to five million dollars that needs to be liquid
7 and be available in the right hand side there
8 and overnight investments to cover the expenses,

9 both claims and administrative, of the fund.
10 The rest of the funds will reside with the trust
11 department.

12 Q. All right. Now with regard to the
13 checks going through, what are you doing there?

14 A. Again, as checks are issued by the fund
15 or by the administrator, that file will be
16 transmitted to United Bank. We hold that. It's
17 a computer generated file, a pretty simple file
18 that's transmitted to the bank. We hold that
19 again for comparison. We compare check number,
20 check amount and so forth before those items
21 begin to clear the Federal Reserve.

22 An example, you could have check number
23 5207 that's your file or the fund's file told
24 United Bank should be for \$560 that is

□

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1 attempting to clear for \$5600. That will reject
2 and we'll call a designated person to find out
3 what's going on there.

4 Q. So you're going to be connected by
5 computer with this Troy Young that just
6 testified, with his system, so that checks are
7 issued, the bank knows those checks are issued
8 and expects them to come through?

9 A. Yes, sir.

10 Q. With regard to protecting the fund a
11 little bit further, as to all the thousands of
12 checks that will be issued from the individual
13 work stations for either \$150 or \$400, is there
14 a safeguard there?

15 A. The checks themselves?

16 Q. Will it be limited so that checks on
17 that specific account cannot be written for
18 anything more than \$400?

19 A. Yes, that's correct. Again, that will
20 be defined by the fund itself.

21 Q. Now you have a slide here on the EZ Link
22 system. Would you explain what is referred to
23 there?

24 A. EZ Link, it's a propriety system. It's

□

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1 a secure, web-based system. It has the highest
2 level of encryption. The administrator of the
3 fund will tell us at the time the accounts are
4 set up who has access to this account via the
5 web, what their capabilities are, what those
6 users can do, what are the parameters, what can
7 they see.

8 Someone mentioned is it read only, is it
9 view information only, are they able to transfer
10 funds between accounts, can they issue stop
11 payments, if they're able to originate
12 electronic payments, what sort of duality is
13 involved. We always request the key folks to
14 sign on via password to initiate any sort of
15 transaction.

16 Our EZ Link system, of course, is 24
17 hours a day, seven days a week so it's not
18 sensitive to the time, so the bank is
19 available.

20 Q. You were provided with some assumptions

21 on this project. Would you describe what those
22 are and what you, as a bank, did based on those
23 assumptions?

24 A. Yes, as a bank, two things that we do.

□

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1 we, of course, invest the funds safely, get the
2 maximum amount of return we can, and then we
3 process transactions, that part of the
4 transaction level business. So we are assuming
5 between 40,000 or 70,000 participants. You will
6 see that we give assumptions for both of those.
7 We assumed a testing cost of \$85.60 for each
8 participant, 70 million dollar lump sum payment
9 at the time received in our trust department to
10 begin the testing process immediately.

11 We also assumed a 2.8 percent return on
12 the investment portfolio and we also assumed
13 that we'll be keeping a hundred thousand dollars
14 investable in that checking account, master
15 account, even before the overnight sweep
16 activity. We assumed a sweep overnight
17 investment rate of 2.13 percent, which is the
18 current rate. If the Federal Reserve continues
19 to raise rates, that will impact positively for
20 the fund.

21 And again, the final assumption there is
22 that this takes place immediately. Obviously
23 you will see in a moment our if the investment
24 return is enhanced if those funds reside there

□

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1 for longer than we thought needed.

2 Q. The next thing that's on that slide, you
3 have a 2.8 percent investment return. This is a
4 zero risk tolerance account, correct?

5 A. That's correct.

6 Q. That means that you've been instructed
7 that this doesn't go into stock funds, doesn't
8 go into anything where there's any risk at all
9 other than the failure of the entire United
10 States government?

11 A. That's correct.

12 Q. And so that's where that 2.8 percent
13 figure comes from?

14 A. That's correct, and it will be
15 collateralized with those government
16 obligations.

17 Q. So if the United States government
18 interest rate goes up -- what do they call that
19 interest rate?

20 A. The federal funds rate.

21 Q. Yes. If that goes up --

22 A. Then it would enhance this return.

23 Q. So the number that's on there isn't a
24 fixed number, it's a moving target in the sense

□

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1 that if the federal funds rate goes up, the
2 benefit to the class goes up?

3 A. Yes. March 22nd if the next Fed
4 meeting. More than likely, they will raise it.
5 If they do, then they would be reflected in a
6 higher rate of return here.

7 Q. Now we requested you to do some
8 estimates as to income and expenses on this
9 account so that the Court and all interested
10 parties would have a general idea, and that is
11 with the realization that these are estimates
12 based upon certain number of participants and a
13 certain duration of the project and if the
14 project takes longer or shorter, that will
15 change it, if the number of participants
16 changes, that will change it, but based upon the
17 estimate of 40,000 participants and the other
18 variables being as we've hypothesized, could you
19 just describe what will happen with regard to
20 income versus expenses?

21 A. As you can see, there's two sections.
22 For one year, there's been some discussion that
23 it could be done in a year so we took 40 and 70,
24 which you will see in a moment, used both a year

□

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1 and a year and a half.

2 The two components of the income,
3 obviously it's the investment income from the
4 trust side of the bank. The other component of
5 income is that overnight investment that I
6 mentioned earlier. The funds will never,
7 anything above \$100,000 will always be invested
8 in those secured overnight investments. That
9 reflects total income on the one year of
10 \$1,581,586.

11 Expenses are simply activity charges for
12 handling the number of items. We estimate

13 40,000 participants for one year. You're
14 talking somewhere around 3500 to 3600 items per
15 month. The asset management fee there, \$81,541
16 to the trust department, is based upon the fee
17 of 15 basis points of managing the assets of the
18 fund. And again we're managing with a liquidity
19 window of one year, making sure there's always a
20 rolling in this scenario of approximately three
21 million dollars available for needs of the fund,
22 for net income of a \$1,485,617.

23 The same logic applies to the 1.5
24 years. You have a little higher income return

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1 because it's a longer period of time on those
2 40,000 participants. The activity charges are
3 slightly more because again you're spreading the
4 activity out over an a year and a half as
5 opposed to a year. It yields a little higher
6 net income in terms of the banking activity fee
7 of \$932,106.

8 Q. And if there's 70,000 participants,
9 which we hope that there are, then the income
10 goes down a little bit because the money moves
11 out a little quicker, is that correct?

12 A. That's correct.

13 Q. And that's basically what's shown in
14 that next slide that I've put up there?

15 A. Yes, sir.

16 Q. And as to the activity charges and the
17 costs which United is charging, are these all
18 competitive with banks throughout the country?

19 A. Yes, sir, it's my experience of 25 years
20 doing this, our fees are within line.

21 Q. And the summary of your charges, the
22 charges which are shown on that chart, which is
23 not actually in the record, but just so the
24 Court can see what's being charged, those are

□

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1 the ordinary charges which your bank and all
2 banks in this area charge?

3 A. Yes, sir.

4 Q. Or in that ballpark?

5 A. They are.

6 Q. So your goals are what for the project?

7 A. First and foremost, our goal is to
8 ensure that the funds that we are entrusted with
9 are invested to preserve capital and to generate
10 the maximum return available.

11 It's also to simplify. what we do in
12 cash management is to make this process as
13 simple as possible so we do it daily for the
14 most part, making sure we have zero balance
15 accounts for funding specific activities defined
16 by the fund.

17 we also have a branch network so these
18 participants, as they come in and they're paid
19 funds, there are local branches that they can
20 take those checks and cash them if needs to be.

21 The positive data last bullet point
22 there is a particularly important piece of this,
23 is for fraud protection, because as those checks
24 are issued, that file is transmitted to the

□

1 bank. We do this, again it's routine for us, we
2 pick it up and we're protecting the issuance of
3 those checks and match those checks with the
4 checks that are clearing.

5 The account analysis statement will give
6 excellent reporting. The administrator will get
7 analysis statements from the bank that detail
8 all the activities and charges. We will provide
9 an electronic image of all the cancelled
10 checks. I'm certain there will be times when
11 folks will want to have a copy of a check. It
12 will be on a CD ROM. It's easy to retrieve.

13 There will be an account officer
14 assigned to this particular account available by
15 phone or cell phone. Again, it's a secure
16 website, 24 hours a day, seven days a week. If
17 people need to find out something about the
18 account, the administrator, they can get on line
19 and find what they need.

20 Q. Now we looked into some other
21 alternatives for distribution of the funds,
22 didn't we? And I'll preface that with were you
23 told that the objective was to ensure that
24 people could get their money immediately when

□

1 they participated in the project and not
2 sometime later?

3 A. Yes, sir.

4 Q. And we looked all two alternatives. One
5 would be check disbursements and the other would

6 be pre-paid credit card.

7 Would you explain why one was selected
8 over the other and just basically differentiate
9 those?

10 A. As you can see, the two methods of
11 disbursing funds, in this day and time, it's
12 pretty much the methods you have. You either do
13 a tradition check that we're all familiar with
14 or you do a pre-paid card, which is getting more
15 and more common.

16 For this particular situation, we
17 determined, although you will see in a moment
18 the most profitable alternative for United Bank
19 would have been to issue cards but it doesn't
20 serve the fund the way it should and certainly
21 it's more expensive to issue cards for the
22 fund.

23 The check disbursement, when someone
24 comes in for the testing, they're issued a

□

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1 check, then at the end of the day, that file is
2 transmitted to the bank so we can ensure that
3 that's part of the positive pay.

4 I mentioned that second bullet point
5 number two, that fraud protection piece. Again
6 instant issuance of the check, it's the best
7 alternative from the terms of cost, expense.

8 A pre-paid card, we did investigate
9 that. Because it's a one time payment, if
10 you're issuing that card like we do to our debit
11 card holder and they use that card as a

12 mechanism for payment over and over again, then
13 it becomes more cost-effective, but not when
14 you're just issuing cards for a one time
15 payment, it's very expensive.

16 For example, with 40,000 participants,
17 it's going to cost somewhere north of \$200,000
18 to issue the card. If you get 70,000
19 participants, about \$400,000 to issue those
20 pre-paid cards. Plus you have to control those
21 cards. Someone has to, because they are
22 pre-paid, they're pre-loaded with the dollar
23 amounts so someone has to accept responsibility
24 for those cards at those sites.

Q

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1 There's lost PINS. Folks who walk out
2 and get their card, they won't know what their
3 PIN number is. Someone has to administer that
4 or reset PINS or even maybe re-issue cards.

5 There's an expense called breakage
6 expense. Basically we've all had calling cards
7 and if you got a few dollars that you don't
8 expend on that card, how do you deal with that?
9 Do you say the cards have an expiration date?
10 what happens to those few dollars that haven't
11 been used? That has to be thought, that process
12 has to be dealt with as well. And again, the
13 most profitable alternative for the bank would
14 have been to issue cards but it's not the best
15 for the fund.

16 Q. That's for primarily two reasons; one,
17 security, and two, getting the most money to the

18 members of the class?

19 A. That's correct.

20 MR. DEITZLER: Thank you. That's all
21 the questions I have.

22 MR. JANSSEN: None.

23 THE COURT: No questions?

24 MR. JANSSEN: No.

□

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1 THE COURT: All right, thank you, sir.

2 You're excused.

3 MR. DEITZLER: Call Robert Astorg.

4 (Witness, ROBERT ASTORG, sworn.)

5 DIRECT EXAMINATION

6 BY MR. DEITZLER:

7 Q. Some of us know who you are, probably
8 including the Judge, but for the rest of the
9 people, would you identify yourself?

10 A. I'm Robert G. Astorg. I'm a Certified
11 Public Accountant. I've practiced public
12 accounting in this town continuously since 1973.

13 Q. Have you had several companies that you
14 were owner or part owner of?

15 A. I've been a partner in several CPA
16 firms.

17 Q. What is your current employment?

18 A. I'm employed by American Express Tax and
19 Business Services, which is a wholly owned
20 subsidiary American Express, the people that
21 issue the card.

22 Q. Have you been asked to perform a
23 function in the health project if the Court so

24 approves?

□

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1 A. Yes, I have, Harry. I've been asked to
2 function as what the Internal Revenue Section
3 468 B calls the Designated Settlement Fund
4 Administrator.

5 Q. Would you just, in layman's terms, tell
6 us what 468 B is and why it's applicable to this
7 plan and settlement?

8 A. 468 B tells, in what I'll call
9 Georgetown whiskey language, what can go into
10 the fund, whether it's taxable income, whether
11 it's not.

12 It provides for what is is a deductible
13 expense and what is not. It provides what the
14 tax rate is, if there's any net income, that
15 taxable income to the fund.

16 Q. Does 468 B specifically apply to class
17 action settlement?

18 A. Yes, it does.

19 Q. Is the advantage of 468 B that you get
20 out of the tax issues if the money was just paid
21 to, for instance, the lawyers to distribute?

22 A. The tax treatment is totally different.
23 In this particular fund, since the payments are
24 being made to the class members as payments for

□

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1 what I'll call medical treatment, it's not
2 taxable income to the recipients.

3 Q. Now as the Administrator, your specific

4 duty is defined by section 468 B and by order of
5 the Court, correct?

6 A. By understanding is my first duty is to
7 the Court and to the project, to ensure that the
8 money is only spent for what the Court order
9 says it's to be spent for and no one that isn't
10 supposed to get the money doesn't get the money.

11 Q. And you've sat through this entire
12 hearing and you've also reviewed the proposed
13 court documents and you understand that you
14 would have to review the final court document,
15 and if the Court so approves, do you accept the
16 responsibility to take on that job?

17 A. I understand my responsibility and I
18 agree to perform those services.

19 Q. And have we also made provisions for an
20 auditing of your function and the project?

21 A. Yes, there is money provided in the
22 budget that was displayed on the screen this
23 morning for the reports that I will make to the
24 Court as ordered by the Court to be audited.

□

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1 Q. And do you feel that's an appropriate
2 additional check and balance? Even though we
3 don't have any doubt as to your honesty and
4 integrity, you don't mind that somebody is
5 looking over your shoulder?

6 A. I'm very thankful that someone is
7 looking over my shoulder.

8 Q. Will you be doing reporting to the
9 Court?

10 A. I plan to report to the Court as I am
11 ordered to. I would suspect that the very
12 minimum that I should report would be quarterly,
13 based on calendar quarters.

14 MR. DEITZLER: That's all the questions
15 I have.

16 MR. JANSSEN: Nothing.

17 THE COURT: Thank you, Mr. Astorg.
18 You're excused.

19 MR. DEITZLER: Judge, at this time,
20 either Barbara Arnold or Ed Siegel has a
21 petition before the Court with regard to
22 there was an Objectors' petition. We worked
23 out the concerns of the Objectors to
24 everybody's satisfaction, I believe, and we

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1 have no objection to the relief which he has
2 requested in his petition.

3 MR. SIEGEL: Thank you, Mr. Deitzler.
4 May it please the Court. I'm Edward
5 Siegel. I represent the five individuals
6 who raised some objections to the
7 settlement.

8 As a result of good faith negotiations
9 between myself and my co-counsel and
10 Mr. Hill and his counsel, his partners, we
11 have arrived at a settlement which we have
12 submitted to the Court and we've made some
13 significant net benefits to members of the
14 class, to those who don't submit to the
15 blood tests and/or participate in the

study.

As a result of this, we have requested a fee of, an incentive fee of \$500 for each of our clients, of \$2500, and also a fee on our behalf of \$72,500, which is inclusive of all our expenses and everything that we've incurred.

It's important to note that as Mr. Deitzler has said, class counsel has no

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objections to this fee.

MR. DEITZLER: I also might note that that fee comes out of our money and not the class's money and not DuPont's money.

MR. SIEGEL: Right.

MR. DEITZLER: It would come out of whatever fees you grant to us, and we have no objection.

THE COURT: All right.

MR. SIEGEL: I have nothing further, Your Honor, if you have no questions.

THE COURT: Is there any objection by anyone?

Motion will be granted.

MS. ARNOLD: Your Honor, you have the original order.

THE COURT: I beg your pardon?

MS. ARNOLD: You have an order. I submitted an order.

MR. DEITZLER: We'll get all the orders at the end of the hearing, if you don't

22 mind.

23 Mr. Crichton is next. He's the guardian
24 ad litem.

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1 MR. CRICHTON: Your Honor, I was
2 appointed guardian ad litem by the Court
3 some months ago and have undertaken a number
4 of activities, including conferring with
5 counsel for plaintiffs, inspecting portions
6 of the activity case files, reviewing the
7 proposed class action settlement agreement,
8 reviewing the notices that were issued,
9 reviewing the requirements for notice,
10 reviewing the settlement agreement in
11 principle, the qualifications of the
12 proposed plan administrator.

13 I have conferred with various witnesses
14 that came before the Court today, including
15 Mr. Astorg, Dr. Brooks, Mr. Maher, counsel
16 for individuals, and I have concluded that
17 the settlement is in the best interests of
18 those individual class members that may be
19 afflicted with a legal disability.

20 For example, those individuals that
21 would not be of age that are effected by the
22 settlement, those individuals that may have
23 been adjudicated incompetent or otherwise be
24 incompetent and such individuals that may

□ 164

1 well be incarcerated that are subject to the
2 settlement, and as I have stated, I think

3 the settlement does protect their interests
4 and I would continue to see my role as a
5 continuing guardian ad litem to keep abreast
6 with the developments of the action and
7 designate that information as appropriate.

8 THE COURT: Thank you, Mr. Crichton. I
9 have your report in writing. Any thoughts
10 on his report?

11 MR. DEITZLER: I should note that
12 Mr. Crichton and I have spoken and it's our
13 understanding and intention that if there is
14 residual and if the residual gets into an
15 amount that we need to come back into the
16 Court because it's substantial for the
17 minors, that we will plan to do so.

18 Next Mr. Hayhurst has reserved, through
19 a filing with the Court, a request to speak,
20 and we don't have any objection to him
21 speaking as a non-party.

22 THE COURT: Very well.

23 MR. HAYHURST: Your Honor, I'm Richard
24 Hayhurst of Parkersburg and I represent

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1 Lubeck Public Service District. We used to
2 be a party to this action. We are no longer
3 a party. We're not a party now, we are not
4 bound by the settlement. We don't intend to
5 file an appeal of any order that is done
6 today.

7 All our concern is is this: We hope,
8 like everybody else does, for humanitarian

9 reasons, that there is no connection found
10 between this substance in the water and any
11 health-related project, for humanitarian
12 reasons.

13 THE COURT: As do I.

14 MR. HAYHURST: But we have to look at
15 what happens to us down the road, as a water
16 utility, if no connection is found under
17 today's standards and DuPont elects to cease
18 providing the filtration service that it has
19 tentatively agreed to provide. That is a
20 matter of substantial concern to us because
21 of the cost of operation that those filters
22 impose upon our water rate payers, and I
23 represent maybe 11,000 of the 80,000 people
24 in the class, and of course, all those

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0
1 people are plaintiffs as well.

2 It's not a matter of immediate concern
3 but it is a matter of long term concern that
4 for either liability purposes or political
5 purposes or maybe even for health purposes,
6 we may not be able to turn over those
7 machines if the science panel determines
8 that there is no connection.

9 It's a matter of concern to other water
10 utilities who are going to be affected by
11 this and it's also a matter of concern to
12 the West Virginia Public Service Commission,
13 which is present here today.

14 So having said that, I want to assure

15 the Court that we have no interest, no ax to
16 grind one way or the other as far as this
17 settlement is concerned. It appears to be a
18 very shrewdly and competently crafted
19 settlement, but down the road, it may have
20 consequence to us as a water utility and we
21 wanted the Court to be aware of that before
22 it passed on the issues here today.

23 THE COURT: Thank you.

24 MR. DEITZLER: Mr. Lewis.

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1 MR. LEWIS: Your Honor, my name is
2 Richard Lewis. Like Mr. Hayhurst, I
3 represent the other West Virginia utility
4 that is to be offered water treatment
5 facilities through this settlement, and as
6 we echo Mr. Hayhurst's discussion about the
7 fact that the Mason County PSD, which I
8 represent, is not interested in appealing
9 this or in any way inhibiting the
10 proceedings of the settlement here.

11 However, again the concerns that have
12 been raised about what the future impact
13 could be are concerns that the Mason County
14 PSD echoes. I think there are water
15 districts in Ohio that have also raised the
16 same concerns with us.

17 The other issue that needs to just be
18 noted for the Court is that at present, we
19 have not yet had any discussion of the terms
20 of the offer, and I mean the legal terms as

21 to how the equipment will be offered and
22 potentially installed, operated, et cetera.
23 Certainly the Mason County PSD and the water
24 districts are interested to ensure that

□

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1 those terms are fair and reasonable for
2 their customers and anticipate that they
3 will be, but as of present, we have no way
4 of knowing what those terms will be in order
5 to know how we're going to accept or not the
6 offer.

7 THE COURT: Thank you.

8 MR. DEITZLER: Your Honor, I have not
9 been advised of any other speakers. Nobody
10 else has registered as a speaker. I'm not
11 aware that anybody else has requested to
12 speak, and with that in mind, I'll go ahead
13 and proceed with a very brief summary of
14 what we're requesting.

15 The settlement which we have proposed
16 will provide for the water treatment which
17 has been described. It will provide for a
18 scientific answer to the question which
19 everybody is concerned about. It will be
20 based upon, if the study is approved and if
21 the project is approved, real facts and real
22 data, not just animal studies, not just a
23 small plant study or anything like that.

24 The time limit will be extended for all

□

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1 members of the class so that their statute
2 of limitations does not run. It's preserved
3 while this project is being done and while
4 we're looking for the answer, which is
5 unusual in legal proceedings.

6 As I'm sure you know, usually what you
7 end up having is you just have to go to
8 court and have them answer one way or
9 another based upon what's present at the
10 time, and this is a situation where we're
11 going to hold everything until we get what
12 we know to be the real answer. All the
13 injury claims are preserved for every class
14 member so that if a connection is found, two
15 things happen.

16 One, the testing, the medical testing
17 will be paid for to let every class member
18 know whether he or she has anything to be
19 concerned about as to their own health, and
20 that goes up to 235 million dollars worth of
21 testing.

22 The injury claims are beyond that. In
23 other words, if the connection is found, if
24 the disease is found or the defect, birth

□

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1 defect or whatever, and it's related, then
2 each of those persons has an unlimited right
3 to full claim for whatever fair compensation
4 is with regard to those injuries. That's
5 preserved in this settlement.

6 So with that in mind, I respectfully

7 move for the Court to approve the settlement
8 as stated in the joint motion. I would move
9 for the attorneys' fees to be paid separate
10 from the class fund as stated in the
11 petition which has been filed with the Court
12 and is unopposed, and I would move for the
13 Court to approve incentive awards to the
14 lead plaintiffs as stated in the petition
15 which is filed with the Court and which is
16 unopposed.

17 MR. JANSSEN: Your Honor, Larry Janssen
18 on behalf of DuPont, and we join in that
19 portion of Mr. Deitzler's oral motion to the
20 extent that we move the Court for entry of
21 the order consistent with the joint motion
22 which is on file, and specifically that
23 relief which is requested on pages 18 and 19
24 of our joint motion, parts A, B, C, D, E, F,

□

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1 and G. Thank you, Your Honor.

2 I don't think it's necessary to read
3 those into the record because you have
4 those.

5 THE COURT: All right. It is part of
6 the file.

7 Anything further? Anyone else wish to
8 add anything for the good of the order?

9 MR. DEITZLER: No, Your Honor.

10 THE COURT: well, the Court is going to
11 approve this interim settlement. As has
12 been mentioned, I think it was very shrewdly

13 and competently organized proposal and it
14 seems to be a very unprecedented action by a
15 huge corporate defendant, taken in the
16 spirit of community good neighborhood.

17 I want to compliment DuPont on the
18 action in this case.

19 All this is being taken prior to there
20 actually being any submitted evidence to the
21 Court of any disease or causation and I
22 think it's unprecedented in the size and
23 nature of this proceeding. It's one of the
24 class actions which Congress is now trying

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1 to kill but it has certainly served a good
2 purpose in this community. Like some other
3 party has said, I certainly hope that it
4 turns out to be that there is no connection,
5 that the chemical C8 is not toxic and things
6 that has been distributed and has caused no,
7 or will cause no disease or problems. I
8 don't know whether it will or won't and I
9 have no interest in that except to hope that
10 it doesn't, for the good of the entire
11 community and the nation as a whole, because
12 this stuff has spread throughout the
13 country, as I understand it.

14 So I will approve the settlement at this
15 stage and approve the -- well, I already
16 granted the motion for the incentive
17 awards. I have received Mr. Crichton's
18 guardian ad litem report, which will be

19 filed with the Court, in which he approves
20 wholeheartedly this settlement as being in
21 the best interests of the community and the
22 parties.

23 Anything else?

24 Do you have orders to present?

□

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1 MR. DEITZLER: I have an order on the
2 attorneys' fees also, Your Honor, if that
3 will be granted.

4 THE COURT: Yes, sir.

5 MS. ARNOLD: And also the order for the
6 Objectors, Your Honor.

7 THE COURT: Yes, I think I already
8 mentioned that.

9 MR. SIEGEL: You did.

10 THE COURT: This is just one order,
11 isn't it, Mr. Deitzler?

12 MR. DEITZLER: Yes, sir. I believe we
13 previously submitted a proposed order for
14 the class settlement and then I'm looking
15 for the incentive order.

16 I'll bring the other one over, Your
17 Honor. I've got the original somewhere
18 here.

19 THE COURT: I'll say for the edification
20 of the large number of community personnel
21 present there is an order, statewide order,
22 rule regarding cameras and equipment and
23 media in the courtroom and I was concerned
24 that perhaps we would have some problem with

□

1 that today, but I want to congratulate the
2 media and their behavior in court, the way
3 they have conducted themselves, and it's
4 been a real pleasure, and that's totally to
5 the media. I mean that.

6 Anything else, Mr. Deitzler, or anyone
7 else?

8 MR. DEITZLER: No, Your Honor.

9 MR. JANSSEN: Nothing, Your Honor.

10 Thank you.

11 MR. SIEGEL: Nothing, Your Honor. Thank
12 you.

13 THE COURT: Thank you.

14 (Hearing concluded at 2:30 p.m.)
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1 STATE OF WEST VIRGINIA, To-wit:

2 I, Lynne Dolin, a Notary Public and
3 Registered Professional Reporter within and for
4 the State aforesaid, duly commissioned and
5 qualified, do hereby certify that the foregoing
proceedings were duly taken by me and before me
at the time and place specified in the caption
hereof.

I do further certify that said proceedings were correctly taken by me in stenotype notes, that the same were accurately transcribed out in full and true record of the testimony given by said witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which these proceedings were had, and further I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

My commission expires the 3rd day of September, 2009.

Given under my hand and seal this 4th day of March, 2005.

Lynne M. Dolin, RPR
Notary Public