

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
ATTN: EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
[www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)

September 12, 2013

UNRESOLVED SECOND ROUND OF MEDICAL MONITORING ISSUES  
WORKING ORDER TRANSMITTAL REPORT

VIA HAND DELIVERY

The Honorable Thomas A. Bedell  
Circuit Judge of Harrison County  
301 West Main Street, Room 321  
Clarksburg, West Virginia 26301

Re: Perrine, et al. v. DuPont, et al.;  
Civil Action No. 04-C-296-2 (Circuit Court of Harrison County, West Virginia) -  
September 3, 2013 Claims Administrator's Report to the Court Respecting  
Unresolved Second Round of Medical Monitoring Claimant Participation  
Issues; Our File No. 4609-1 {GG-13}

Dear Judge Bedell:

With this letter, we transmit to the Court for its consideration, on paper media and on a disc, in PDF, Word and WordPerfect, a proposed Working Order providing alternative decisions for the Court respecting the six matters that I brought to the Court's attention at the August 22, 2013 hearing, and which I described with more specificity in my September 3, 2013 and September 6, 2013 Reports to the Court, in Exhibits A and B respectively.

Responses to the Report from the *Guardian ad Litem* for Children, who is also the Class Counsel Proxy, and from DuPont are contained in Exhibits C and D respectively, for the Court's consideration.

This Report and proposed Working Order were shared with the Parties for input prior to filing, and reflect their edits.

September 12, 2013

Page -2-

---

Please let me know how we may be of further service to the Court. Thank you for the Court's consideration.

Yours very truly,



Edgar C. Gentle, III  
Claims Administrator

ECGIII/pfo

Schedule of Attachments:

1. **Proposed Working Order**
2. **Exhibit A** - Claims Administrator's September 3, 2013 Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues
3. **Exhibit B** - Claims Administrator's September 6, 2013 Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues
4. **Exhibit C** - Guardian Ad Litem for Children and Class Counsel Proxy's Response to the Claims Administrator's Reports
5. **Exhibit D** - DuPont's Response to the Claims Administrator's Reports

cc: (with attachments)(by e-mail)(confidential)  
David B. Thomas, Esq.  
James S. Arnold, Esq.  
DuPont Representatives on the Settlement Finance Committee

Virginia Buchanan, Esq.  
Plaintiff Class Representative on the Finance Committee

Meredith McCarthy, Esq.,  
*Guardian ad Litem* for Children

Clerk of Court of Harrison County,  
West Virginia, for filing (via hand delivery)

September 12, 2013

Page -3-

---

cc: (continued)

Terry D. Turner, Jr., Esq.

Diandra S. Debrosse-Zimmermann, Esq.

Katherine A. Harbison, Esq.

Michael A. Jacks, Esq.

Mr. Billy Sublett

William S. ("Buddy") Cox, Esq.

J. Keith Givens, Esq.

McDavid Flowers, Esq.

Farrest Taylor, Esq.

Ned McWilliams, Esq.

Angela Mason, Esq.

Mr. Don Brandt

Mr. Randy Brandt

### Index of Attachments

1. **Proposed Working Order**
2. **Exhibit A** - Claims Administrator's September 3, 2013 Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues
3. **Exhibit B** - Claims Administrator's September 6, 2013 Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues
4. **Exhibit C** - Guardian Ad Litem for Children and Class Counsel Proxy's Response to the Claims Administrator's Reports
5. **Exhibit D** - DuPont's Response to the Claims Administrator's Reports

## PROPOSED WORKING ORDER

[SEPTEMBER 12, 2013 PROPOSED WORKING ORDER TO RESOLVE MEDICAL  
MONITORING ROUND TWO ISSUES]  
[PROVIDED ON PAPER MEDIUM, PDF, WORD AND WORDPERFECT]

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al., individuals  
residing in West Virginia, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

Case No. 04-C-296-2  
Thomas A. Bedell, Circuit Judge

E. I. DUPONT DE NEMOURS &  
COMPANY, et al.,

Defendants.

ORDER RESOLVING MEDICAL MONITORING ROUND TWO ISSUES

Presently before the Court are the unresolved issues described below and related to the anticipated November 1, 2013 implementation of the second round of testing for the Medical Monitoring Program.

In order to allow the Parties to be heard on these issues, the Claims Administrator submitted an initial Report to the Court on September 3, 2013, after sharing it with the Parties for input. The initial Report contained preliminary comments of DuPont, received prior to its filing. A supplemental DuPont response was submitted to the Court on September 6, 2013, and a response was also received from Meredith McCarthy, the *Guardian ad Litem* for Children and a proxy for Class Counsel. On September 6, 2013, the Claims Administrator also submitted a Report to the Court concerning the overhead considerations for the Medical Monitoring Program, after vetting it with the Parties.

The six issues presented to the Court are resolved below:

- A. Should the Claimants Be Informed of the Number of Soil and House Properties That Were Found to Have Cadmium, Arsenic or Lead above Safe Levels and Should the Medical Monitoring Claimants Be Informed of the Results of Medical Monitoring Testing, in Terms of Disease That Has Been Detected?

[Alternative A: Letter Can Be Used]

The Court has reviewed the proposed letter which would provide this information to the Medical Monitoring Claimants, looking at both a redacted version and a complete version which was filed under seal. After careful consideration of the pros and cons of using such a letter, the Court approves the use of the letter, subject to edits received from the Parties. The rights of the Claimants to know the degree of contamination of the Class Area and the initial results of round one of the Medical Monitoring Program are more important than the adverse consequences described by DuPont, such as a health scare; an adverse impact on property values; or that the disclosures may mislead the recipients.

The Court notes that DuPont has made some helpful editing suggestions in its submission to the Court with respect to the letter. The Claims Administrator is expected by the Court to engage in a reasonable amount of outreach to encourage Claimant participation in the Remediation Program and the Medical Monitoring Program. Subject to this caveat, the Court encourages the Claims Administrator to review the edits of DuPont and make reasonable adjustments as he deems appropriate. The final decision on the wording of the letter, however, shall rest with the Claims Administrator.

[Alternative B: Letter Cannot Be Used]

The Court agrees with DuPont that the adverse consequences of disclosing the letter are greater than the utility of providing it the Medical Monitoring Claimants. The Claimants

participating in the Remediation Program or the Medical Monitoring Program received their results of their individual testing and that should be incentive enough to their participation. Potential adverse impacts of this disclosure on concern for human health and property values need to be considered also.

**B. In Notifying the Claimants Who Checked the “Yes” Box, Indicating They Wanted Medical Monitoring, Should All Approximately 4,000 Claimants Be Notified or Only the Ones Who Participated in the First Round of Testing?**

The Court hereby determines that all Claimants who checked the “YES” box should be notified of the second round of testing. This comports with the Order Resolving Medical Monitoring Program Issues in Preparation for November 1, 2011 Implementation Date dated October 21, 2011. Each Claimant who initially expressed an interest in participating in the Program should be notified of every round of testing.

**C. Should the Medical Monitoring Claimants Get a New Medical Monitoring Card?**

**[Alternative A: Yes]**

The Court does not believe that providing a new Medical Monitoring Card at this time is inappropriate. The Claims Administrator notes that the old card did not include the phone number number of the local Spelter Claims Office and the old card did not specifically state that Medical Monitoring is only for testing and not medical care. The new card cures these deficiencies, thereby allowing the Claimant to better communicate with the Settlement and helping avoid confusion.

**[Alternative B: Do Not Allow New Card]**



To issue a new Medical Monitoring Card to each participant is unnecessary. The Spelter Claims Office telephone number and the explanation of the scope of Medical Monitoring are already contained on the Settlement website and the newsletter previously provided to Claimants.

**D. In Notifying the Claimants of the Medical Monitoring Program, Should There Be One Mail out or Two?**

**[Alternative A: Approve Two Mail Outs]**

CTIA, the Third Party Administrator, recommends two mail outs, as being a more effective method of notifying Claimants. The first mail out would be a newsletter indicating that Medical Monitoring is about to take place and providing the Claimant with background information concerning the status of the Settlement. It would also provide an overview of what Medical Monitoring would provide and a list of the participating Medical Providers with their contact information. The next correspondence would be to begin to set up an appointment for the Claimant to be tested under the Medical Monitoring Program. The cost difference of \$2,500 for having two mail outs instead of one is justified under the circumstances.

**[Alternative B: Deny Two Mail Outs]**

Multiple mailings would create an unnecessary administrative expense, and are hereby denied. One mailing containing appropriate information necessary to participate in the second round of testing is actual notice to the Class Members, all which DuPont should be required to do. The existing website provides any interested Class Member with information necessary to participate in the Program.

E. Should an Initial Screening Medical Interview Form Be Prepared?

The Court approves the Claims Administrator's preparation of an initial screening form to help provide for uniform initial screening of all Claimants. The Court finds that preparing necessary forms to carry out the initial Medical Monitoring Program is within the discretion of the Claims Administrator after receiving input from the Finance Committee and the *Guardian ad Litem* for Children, which he has done. The Settling Parties are encouraged to provide the Claims Administrator with any reasonable edits to the form, which DuPont has done in its comments, and the Claims Administrator is instructed to consider them in finalizing the form. For example, the Claims Administrator should correct the caption of the form and make the references to CT Scans, as suggested by DuPont. However, the final decision on the wording of the form shall rest with the Claims Administrator.

F. What Measures Should Be Taken to Schedule Each Claimant for Medical Monitoring?

[Alternative A: Approve Three Strikes and You Are out Rule]

The Court finds that the three strikes and you are out rule described by the Claims Administrator and supported by the *Guardian ad Litem* for Children are reasonable. Reasonable means of notifying Claimants is within the discretion of the Claims Administrator, after receiving input from the Parties as he has done here.

[Alternative B: Do Not Use Prior Method]

The Court finds that the same notice process to Claimants for round one of testings should not be used for the second round, because they did not produce demonstrable success. If a Medical Monitoring Claimant does not respond to one notice to schedule an appointment, the Claimant should have to wait for the next round of testing, two years later.

Provided that the Claims Administrator acts in accordance with the terms of this Order, he, and his staff, employees and agents are granted Judicial Immunity.

IT IS SO ORDERED.

Finally, it is **ORDERED** that the Clerk of this Court shall provide certified copies of this Order to the following:

David B. Thomas, Esq.  
James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P.O. Box 3824  
Charleston, WV 25338  
*Counsel for DuPont*

Meredith McCarthy, Esq.  
901 W. Main St.  
Bridgeport, WV 26330  
*Guardian ad Litem and  
Proxy for Class Counsel*

Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mithcell,  
Eschner & Proctor, P. A.  
316 South Baylen St., Suite 600  
Pensacola, FL 32591  
*Class Counsel*

J. Farrest Taylor, Esq.  
Cochran, Cherry, Givens, Smith Lane  
& Taylor, P.C.  
163 West Main Street  
Dothan, AL 36301  
*Class Counsel*

Edgar C. Gentle, III  
Michael A. Jacks  
Gentle, Turner & Sexton  
P. O. Box 257  
Spelter, WV 26438  
*Special Master*

ENTER: \_\_\_\_\_

\_\_\_\_\_  
Thomas A. Bedell, Circuit Judge

## **Exhibit A**

Claims Administrator's September 3, 2013 Report to  
the Court Respecting Second Round of Medical  
Monitoring Claimant Participation Issues

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
ATTN: EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
www.perrinedupont.com  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)

September 3, 2013

VIA HAND DELIVERY

The Honorable Thomas A. Bedell  
Circuit Judge of Harrison County  
301 West Main Street, Room 321  
Clarksburg, West Virginia 26301

Re: Perrine, et al. v. DuPont, et al.;  
Civil Action No. 04-C-296-2 (Circuit Court of Harrison County, West Virginia) -  
Report to the Court Respecting Second Round of Medical Monitoring Claimant  
Participation Issues; Our File No. 4609-1 {GG-13}

Dear Judge Bedell:

Following-up on our discussion concerning this topic during the August 22, 2013 hearing on the Settlement Budget, below I describe the issues that we would like the Court to decide, with my requesting that the Settling Parties provide their written comments to the Court and the undersigned by Friday, September 6, 2013.

- A. Should the Claimants be informed of the number of soil and house properties that were found to have cadmium, arsenic or lead above safe levels and should the Medical Monitoring Claimants be informed of the results of Medical Monitoring testing, in terms of disease that has been detected?

During our interviews with the physicians, and also upon the undersigned's reflection, it was thought that a Medical Monitoring Claimant could make a more reasoned choice on whether to participate in the Program if he or she knows how contaminated the Class Area is based upon testing, and what portion of participating Medical Monitoring Claimants tested positive for disease.

Attached for the Court's review in Exhibit A is the proposed letter that would provide this information to the Medical Monitoring Claimants.

Exhibit A has been redacted. However, this information has already been gathered and is being provided to the Court and to Counsel for the Parties under seal.

September 3, 2013

Page -2-

---

- B. In notifying the Claimants who checked the "YES" box, indicating they wanted Medical Monitoring, should all approximately 4,000 Claimants be notified or only the ones who participated in the first round of testing?

In its October 21, 2011 Order Resolving Pending Medical Monitoring Program Issues in Preparation for November 1, 2011 Implementation Date (the "October 2011 Order"), the Court made the following decision concerning Claimants who did not participate in one round of testing:

The Medical Monitoring Plan is a right of a Claimant that cannot be waived, with such a waiver not being reflected anywhere in the Settlement Memorandum of Understanding ("MOU") or any related orders.

In the undersigned's opinion, the only way to implement the foregoing decision of the Court is to notify all Claimants who checked the "YES" box indicating that they want to participate in Medical Monitoring, for the second round of testing, and all subsequent rounds of testing.

- C. Should the Medical Monitoring Claimants get a new Medical Monitoring Card?

CTIA, the Settlement's Third Party Administrator for Medical Monitoring, recommends that a new card be issued to the Medical Monitoring Claimants who checked the "YES" box, because the old card did not include the phone number of the local Spelter Claims Office, and the old card did not specifically state that Medical Monitoring is only for testing and not medical care.

Because of these deficiencies in the old card, it was much more difficult for Claimants to notify the Settlement if they had to reschedule an appointment, had a change of address or phone number, or otherwise had difficulties participating in the Program. A lack of a clear explanation about the scope of Medical Monitoring led to much Claimant confusion, and to doctors billing for services that the Program could not provide, and then trying to get the Claimant to pay the bill.

In the undersigned's opinion, a new card is therefore justified.

- D. In notifying the Claimants of the Medical Monitoring Program, should there be one mail out or two?

CTIA, which administers medical programs around the country, recommends two mail outs, as being a more effective method.

The first mail out would be a newsletter indicating that Medical Monitoring is about to take place, and providing the Claimant with some information concerning the status of the Settlement, including the level of contamination found in the Class Area and the results of Medical Monitoring

September 3, 2013

Page -3-

---

testing based upon the high percentage of Claimants who agreed to provide their data for scientific research. It would also provide an overview of what Medical Monitoring will provide and a list of the participating Medical Providers with their contact information.

The next correspondence would be to begin to set up an appointment for the Claimant to be tested under the Medical Monitoring Program.

There is an approximately \$2,500 cost difference in having two mail outs as opposed to one.

E. Should an initial screening medical interview form be prepared?

As indicated by the follow-up memorandum to the physicians in Exhibit B, which was prepared after CTIA and I met with the Participating Physicians in July in preparation for the second round of testing, the Medical Providers have requested this uniform screening interview form, in order to interview each Claimant with consistency. A draft of the form is in Exhibit C.

Based upon the input of the physicians, and the recommendations of CTIA, it is my recommendation that this form be used by the physicians, in their discretion. It would help ensure that all Claimants get the same level of medical screening, providing uniformity in the process.

F. What measures should be taken to schedule each Claimant for Medical Monitoring?

During the first round of testing, a three strikes and your out rule with respect to a two year testing cycle was agreed to by the Settling Parties during the May 15, 2012 Quarterly Medical Monitoring Meeting. This process includes sending three letters to a Claimant, with each letter being one month apart, and with the third letter asking the Claimant to contact CTIA within sixty (60) days if he or she wished to participate. After the sixty (60) day deadline has expired, a Claimant then wishing to participate in the Program would be allowed to do so for good cause. It was also decided that even if a Claimant does not participate in the Program in one 2 year testing cycle, the Claimant would be invited to participate in subsequent testing cycles.

Because Medical Monitoring is a right that cannot be waived, so that, in the undersigned's opinion, a Claimant's not participating in the first round of Medical Monitoring should not infringe the right in any manner, it is recommended that the same notice process followed in the first round of testing be used in the second round of testing.

Your Honor, many thanks for your consideration of these issues. We received the preliminary objections from DuPont in Exhibit D and DuPont reserves the right to supplement them by the suggested Friday deadline in a formal filing with the Court. After the Parties provide their comments by Friday, September 6, 2013, the undersigned will prepare a proposed Order, with

September 3, 2013

Page -4-

alternative decisions for the Court's consideration on each topic, based upon the comments received from the Settling Parties. Of course, the proposed Order will be vetted with Counsel for the Settling Parties before its submission to the Court.

Please let me know how we may be of further service to the Court.

Yours very truly,



Edgar C. Gentle, III  
Claims Administrator

ECGIII/pfo

Schedule of Attachments:

1. Exhibit A - Proposed Letter to Medical Monitoring Claimants Containing Property Remediation Program Results and First Round Medical Monitoring Disease Information (REDACTED)
2. Exhibit B - Follow-up Memorandum to Participating Physicians
3. Exhibit C - Proposed Initial Screening Medical Interview Form
4. Exhibit D - DuPont's Preliminary Objections

cc: (with attachments)(by e-mail)(confidential)  
David B. Thomas, Esq.  
James S. Arnold, Esq.  
DuPont Representatives on the Settlement Finance Committee

Virginia Buchanan, Esq.  
Plaintiff Class Representative on the Finance Committee

Meredith McCarthy, Esq.,  
Guardian Ad Litem for Children

Clerk of Court of Harrison County,  
West Virginia, for filing (via hand delivery)



September 3, 2013

Page -5-

---

cc: (continued)

Terry D. Turner, Jr., Esq.

Diandra S. Debrosse-Zimmermann, Esq.

Katherine A. Harbison, Esq.

Michael A. Jacks, Esq.

Mr. Billy Sublett

William S. ("Buddy") Cox, Esq.

J. Keith Givens, Esq.

McDavid Flowers, Esq.

Farrest Taylor, Esq.

Ned McWilliams, Esq.

Angela Mason, Esq.

Mr. Don Brandt

Mr. Randy Brandt

## EXHIBIT A

Proposed Letter to Medical Monitoring Claimants Containing Property  
Remediation Program Results and First Round Medical Monitoring  
Disease Information (REDACTED)

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837

[www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)

\_\_\_\_\_, 2013

[CLAIMANT NAME]  
[CLAIMANT ADDRESS]

RE: The Perrine Medical Monitoring Program - Second Round of Testing; Our File  
No. 4609-1{GG}, 4609-1{GG-1}, and 4609-1{GG-13}

Dear Claimant:

I hope you are well.

You are invited to participate in the second round of testing provided by the Perrine Medical Monitoring Program (the "Medical Monitoring Program" or the "Program"), which is scheduled to begin in November 2013.

The Program provides free testing for disease for Claimants who lived in the Class Area a minimum amount of time, have already registered for the Program and checked the "yes" box for testing. In deciding whether to participate this time, please note that (i) \_\_\_% of houses tested in the Class Area and \_\_\_% of soils tested in the Class Area Zone 1A had hazardous levels of lead, cadmium, arsenic or zinc; and (ii) \_\_\_% of those medically tested by the Program during the first round of testing had abnormal results. See below.

The Medical Monitoring Program was created to last 30 years, with medical testing conducted once every 2 years. The first round of testing was completed, and only about 50% of the Medical Monitoring Claimants participated and took advantage of the benefits provided in the Medical Monitoring Program.

Your right to participate in the Program will last for the entire 30 year period. So, if you chose not to participate in the first round of testing, you are still eligible to participate in the upcoming second round of testing. The Settlement strongly recommends that you participate in the second round of testing for the reasons discussed below.

I. Benefits Provided by the Medical Monitoring Program

The purpose of medical testing in the Medical Monitoring Program is to provide free early detection of positive findings of diseases, possibly associated with exposure to zinc, cadmium, arsenic or lead. Please note that the Medical Monitoring Program does not provide for any medical treatment, but it does include the following:

- ◆ urinalysis for all Participants over age 15,
- ◆ blood tests for all Participants, and
- ◆ stool samples for all Participants age 18 and above.

After your test results have been returned to your participating physician, you will receive a consultation and physical examination from your participating physician. The Medical Monitoring Program also provides for some additional testing by medical specialist(s), if referred by your participating physician.

The Medical Monitoring Program pays 100% of the cost of the scheduled benefits, so you will not be required to pay deductibles, co-payments, or co-insurance for these tests. Please note, however, that the Medical Monitoring Program does not provide funding for actual medical treatment.

CTI Administrators, Inc. (CTIA) has been selected to assist you in scheduling your testing appointment and provide ongoing customer service to the Participants.

For more information regarding the Medical Monitoring Program, please refer to the Claimant Frequently Asked Questions and Answers conveniently located on the Settlement website at [www.perrinedupont.com](http://www.perrinedupont.com), or call CTIA at 1-866-265-6139.

II. Results of the First Round of Medical Monitoring Testing

Of the \_\_\_\_ tests performed in the first round of testing in the Medical Monitoring Program for the \_\_\_\_% of Claimants who agreed we can use their results for research, \_\_\_\_ (or \_\_\_\_%) had abnormal results. While these results are not related to a specific diagnosis, the Settlement recommends that you participate in the second round of testing. In addition, \_\_\_\_ tests were referred to specialists for diagnoses related to the following: cancer and tumors (\_\_\_\_%), urinary diseases (\_\_\_\_%), skin disorders (\_\_\_\_%), digestive disorders (\_\_\_\_%), respiratory diseases (\_\_\_\_%), heart diseases (\_\_\_\_%), endocrine disorders (\_\_\_\_%), and miscellaneous diseases (\_\_\_\_%).

III. Results of the Property Remediation Program in 2012

As you may be aware, this Settlement provides for a Property Remediation Program (the "Property Clean-Up Program") for Class Areas house and soil properties that have been shown through laboratory testing to be contaminated with hazardous levels of lead, arsenic, cadmium or zinc above the Court-approved clean-up levels.

A. House Remediation

The Settlement has tested \_\_\_\_ Class Area houses, of which \_\_\_\_ (or about \_\_\_\_%) were found to have hazardous levels of lead, arsenic, cadmium and/or zinc. To date, of the \_\_\_\_ contaminated houses, the Settlement has remediated approximately \_\_\_\_ houses, and remediation is ongoing.

B. Soil Remediation

The Settlement has tested \_\_\_\_ soil properties, of which \_\_\_\_ (or about \_\_\_\_%) were found to have hazardous levels of arsenic, lead, cadmium and/or zinc. To date, of the \_\_\_\_ contaminated soil properties, the Settlement has remediated approximately \_\_\_\_ soil properties, and remediation is ongoing.

Based on (i) the percentages of abnormal test results from the first round of Medical Monitoring testing, (ii) the percentages of referrals to specialists as a result of testing, and (iii) the percentages of contaminated houses and soil properties, we strongly recommend that you participate in the second round of testing and take advantage of the free benefits provided in the Medical Monitoring Program.

We look forward to working with you during the second round of testing.

Yours very truly,

Edgar C. Gentle, III  
Claims Administrator

## EXHIBIT B

Follow-up Memorandum to Participating Physicians

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
ATTN: EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
www.perrinedupont.com  
perrinedupont@gtandslaw.com

August 2, 2013

Mr. Jeffrey S. Boylard  
United Hospital Center  
327 Medical Park Drive  
Bridgeport, WV 26330

Mrs. Lori Martino  
MVA Clinics  
1322 Locust Avenue  
P.O. Box 1112  
Fairmont, WV 26555-1112

Ms. Tiffany Davis  
MedExpress Urgent Care  
120 Medical Park Drive, Suite 100  
Bridgeport, WV 26330

Mrs. Jennifer Owens  
Bridgeport Express Care  
2 Chenoweth Drive  
Bridgeport, WV 26330

Ms. Cathy Waggy  
UPC Shinnston  
686 S. Pike Street  
Shinnston, WV 36431

Ms. Julia Loeffler  
UPC Bridgeport  
1511 Johnson Ave, Suite 104  
Bridgeport, WV 26330

RE: The Perrine Medical Monitoring Plan (the "Plan") - A Product of the  
Perrine DuPont Settlement - Second Round of Testing Planning; Our File  
No. 4609-1 {GG} and 4609-1{GG-1}

---

Dear All:

Thank you for recently meeting with Don and Randy Brandt of CTIA and me regarding the second round of Plan testing.

We look forward to working with each of you, and to using your services for our Plan Claimants.

This memorandum tries to summarize the topics we reviewed with you, and the great ideas you shared with us, to try to improve the Plan and Plan Claimant participation.

#### A. MAKING SPECIALISTS MORE CONVENIENT

Concerning specialists, we will continue to use United Hospital Center (UHC), as we did during the first round of testing, for the CT scans and radiology readings. To make specialists more accessible, instead of, for example, a toxicologist in Pittsburgh, and a urologist in Buckhannon, we hope to make more use of UHC's specialist services in nearby Bridgeport, by contacting UHC specialists in nephrology, urology, dermatology, gastroenterology, anesthesiology, pulmonology, radiology, and neuro psychology. UHC has 3 pathologists, but no toxicologist. We will discuss with them what services they provide, and see if they can substitute for a toxicologist.

#### B. THE KEY TO CLAIMANT PARTICIPATION: CLINIC HOURS AVAILABLE FOR CLAIMANTS

In reviewing the level of Plan Claimant participation during round one at each of the 5 participating Clinics, we found that Clinics with the most participating Claimants have more available hours, including after work and after school hours. While schedules and availability fluctuated, below is a comparison of typical available hours by Clinic:

Name of Group	Weekly Scheduling Capacity				
	Monday	Tuesday	Wednesday	Thursday	Friday
UPC (Shinnston Healthcare)		9:00am - 1:00pm	8:00am - 9:00am	9:20am - 11:30am 1:10pm - 4:20pm	
UPC (Bridgeport Physicians Care)		8:00am - 10:00am			8:00am - 10:00am
MedExpress		9:00 am - 9:00 pm			
Bridgeport Express Care	10:00 am - 6:00pm				
MVA Fairmont	Unknown				
MVA Shinnston	Unknown				



August 2, 2013

Page 3 of 4

We encourage each Clinic to facilitate Claimant participation, by making participation as convenient as possible.

### C. PLANNING FOR ROUND TWO OF TESTING

Round two of testing begins November 1, 2013. We will begin to schedule appointments in October after we send the Plan Claimants a round two testing letter in September, while providing you a copy.

To generate Claimant interest in testing, in the letter we will describe (i) the first round Claimant test results, based on test data from the 93% of Claimants who consented to the scientific use of their test results, and (ii) Class Area contamination test results, and remediation progress. We welcome your ideas on other ways to generate Claimant interest in the Plan.

At your request, the reminder letter will more clearly state that the Plan provides free medical testing but not medical care. Many Clinics complained that Claimants would come for the first appointment to be tested, but failed to show up for the follow-up visit to review the test results. One suggested idea is to make the second appointment at the time of the initial visit, assuming that LabCorp (the testing company) will have the test results in 72 hours.

As you know, if a Claimant doesn't show up for a follow-up visit, you can mail the Claimant the test results with a letter of explanation, and be paid a \$25 fee.

The new Plan card, attached, will include the Claimant's Social Security Number this time, as well as the phone number for the local Spelter Claims Office, which is (304) 622-7443.

To make Claimant appointment sign-ups more efficient (only 50% made it to an appointment in round one), after CTIA tries to set up an appointment with the attached draft correspondence, the local Spelter Claims Office will follow-up locally. Each Clinic will also be able to make appointments directly with the Claimants that utilized the Clinic during the first round of testing.

### D. PROGRAM FORMS

Many of you suggested that we develop a Uniform Screening Form for the Claimant interview. We will develop a draft for your review shortly, and welcome any forms which you now use, as a potential guide.

As a reminder, we will require any new Claimants that did not participate in round one to complete the Medical Authorization Form, and the Scientific Research Consent Form (in which they can agree to or decline the use of their test results for research). The new Claimants must complete these before being tested. We will be printing a new supply of these forms, and the Spelter Claims Office will deliver them prior to the beginning of round two.

August 2, 2013

Page 4 of 4

The CT Scan Authorization Form must be completed by the physician completing the exam determining whether or not a CT scan is needed.

We will also give you copies of the Plan Newsletter and updated Plan Claimant Questions and Answers, so each patient can have one.

E. YOUR SUGGESTED PLAN MODIFICATIONS

The Plan will continue to use LabCorp to collect and run the lab tests. LabCorp will contact the five (5) Clinics to see if you need any supplies.

One Clinic suggested that the Clinic do the urine culture if the urine is positive, instead of having a specialist do it. Please send us a list of the recommended tests. We will then review this suggestion with the Settlement Finance Committee, and will get a response shortly.

It was also suggested that there be a direct test for all four metals, cadmium, arsenic, zinc and lead. Please send us a list of the recommended tests. We will also vet this possible Plan modification, and reply shortly.

Thank you, again, for your support of the Perrine Medical Monitoring Program.

Yours very truly,



Ed Gentle,  
Settlement Administrator

ECGIII/pfo  
Enclosures

cc: (via e-mail)(with enclosures)  
Mr. Donald Brandt  
Mr. Randy Brandt

Handwritten: *Handwritten text, possibly a signature or date.*

JUNIOR BRANDT  
100 COURT AVE STE 306 SAMP  
DES MOINES, IA 50309

Dear JUNIOR BRANDT:

To schedule your appointment for Testing, please contact:  
Shinnston Healthcare  
686 S Pike St  
Shinnston, WV 26431  
Telephone: (304) 592-2100

The Plan will pay 100% of the approved biennial testing. There are no deductibles, co-payments, or coinsurance to be paid by you. Because the Plan will pay at 100% of Allowable Fees, providers will not send you a bill for the balance and will not collect co-payments at the time of service.

Testing protocols for the Plan have been established by the Circuit Court of Harrison County. The Participating Providers should abide by these established protocols for biennial testing as outlined in this letter.

- Adult Testing for Participants ages 18 and above, and
- Child Testing for Participants under age 18.

Perrine Medical  
Monitoring Plan  
Product of the Perrine Defense Solutions

Both protocols assume that there will be an initial set of tests followed by a Consultation and Physical Examination with a Participating Physician to review your test results. The initial tests include:

- urinalysis for all Participants over age 15,
- blood tests for all Participants, and
- stool sample cards provided to Participants over age 17.

Depending on the test results and physical examination, referrals may be made by the Participating Physician to a Specialist including:

- Urologist, for consultations and cytopathology for patients testing positive to urinary system tests;
- Dermatologist, for skin tests for some patients testing positive to urinary system tests;
- Gastroenterologist and/or Proctologist, for consultations, additional stool sample tests, and upper GI endoscopy; and/or
- Medical Toxicologist, for consultations and complete blood count, lead and zinc tests.

Subsequent referrals may be made to an Anesthesiologist, Psychologist, Pulmonologist, and/or Radiologist.

All participants must use Participating Providers who have contracted with the Plan. We will keep you informed of the Participating Providers in your area. Please call if you have questions.

Sincerely,

Lynn Cozad

cc: UPC Shinnston Healthcare

Perrine Medical  
Monitoring Plan  
Product of the Perrine Medical Settlement

UPC Shinnston Healthcare  
686 S Pike St  
Shinnston, WV 26431

On July 25, 2013, we spoke to the following claimant in the Perrine Medical Monitoring Plan. During our conversation, the participant chose your clinic for their medical monitoring appointment. CTIA provided your contact information and asked them to call your office to make their own appointment for their medical monitoring visit.

JUNIOR BRANDT  
100 COURT AVE STE 306 SAMP  
DES MOINES, IA 50309  
Telephone #:  
DOB: 01/01/2000  
SSN: 982222222

Once this claimant make their appointment, UPC will email CTIA the name, birthdate, SSN, date and time of the appointment to: lcozad@claimtechnologies.com

Please let us know if the claimant fails to schedule their testing appointment within three weeks of the date of this notification, so that we may follow up with this participant. You can do this by completing and faxing to 515-244-8650 the following information:

As of \_\_\_\_\_ (date), the above claimant \_\_\_\_\_ has not made an appointment for Medical Monitoring Testing.

Completed by: \_\_\_\_\_  
(UPC Shinnston)

## EXHIBIT C

Proposed Initial Screening Medical Interview Form

### Physicians Consultation Checklist

Procedure	Procedure Code	Description	Allowable Fee	
Office Visit OP New Patient	99243	<p>OV for new patient: Use this code for initial consultation with Perrine Medical Monitoring Plan patient.</p> <p>Physicians should use their best medical judgment when providing services to participants in the plan. Evaluation and Management should include:</p> <ul style="list-style-type: none"> <li>• Detailed History;</li> <li>• Detailed examination; and</li> <li>• Medical decision making of low complexity</li> </ul> <p>Physical examination should include head to toe review for skin lesions. If suspicious skin lesion is noted, refer to dermatologist if necessary.</p> <p>For referrals refer to list of specialists authorized for payment by the Plan. General guidelines for referral to a specialist:</p> <ul style="list-style-type: none"> <li>• If there is blood on the UA or positive or positive cytology refer to Urologist;</li> <li>• If there is beta-2-microglobulin or BUN/Creatinine elevated refer to Nephrologist;</li> <li>• If there is a child with greater than 5ug/dl of lead or adult with greater than 20ug/dl of lead, refer to Neuropsychiatric evaluation;</li> <li>• If there is a child with greater than 10ug/dl of lead or adult with greater than 30ug/dl of lead, refer to Medical Toxicologist;</li> <li>• If stool quaic test is positive for blood, refer to Gastroenterologist</li> </ul> <p>If medically indicated, recommend a CT Scan and complete the "CT Scan Verification Form". If CT Scan is positive, refer patient to Pulmonologist or Cardiothoracic surgeon.</p>	\$170.00	<input type="checkbox"/>
Office Visit OP Existing Patient	99242	OV for established patient (see above)	\$140.00	<input type="checkbox"/>

Forms to be completed  
(Forms will be picked-up weekly by Perrine-DuPont Claims Office)

Form	Description		
CT Scan Verification Form	Provider to complete. Retain for weekly pick-up by Perrine-DuPont Claims Office	Do not bill for this service	<input type="checkbox"/>

## PHYSICIAN SCREEING FORM

Step 1: Biennial Testing – Lab tests ordered through LabCorp depending upon age of Claimant.

Under Age 15	Blood Test Only
Age 15 – 17	Blood and Urinalysis Test
Age 18 and older	Blood, Urinalysis and Stool Sample Test

Retests – Retests should be taken based upon the best judgment of the physician using the following guidelines:

- Retest if specimen was lost or damaged.
- Retest if test results appear to be unreliable or improbable based upon the claimants medical history.
- Retest if results were very close to exceeding the normal range and other symptoms of bad health were present. In this case a retest should be taken in 6 months.

### Step 2: Physician's Consultation

The consultation should consist of a physical examination, review of laboratory findings, pros and cons of having a CT scan (if the claimant is 35 years of age or older and not pregnant), and additional testing with a specialist on an as needed basis.

### Covered Procedures for the Primary Care Physician (PCP)

The Primary Care Physician will either have a 30 minute consultation (99242 for existing patients) or a 40 minute consultation (99243 for new patients).

### Step 3: Referrals to Specialists

If the PCP determines an individual needs to have a CT scan or see a specialist, please contact CTI Administrators at 866-265-6139 to identify an approved imaging facility or specialist in your area. Specialists allowed by the Plan include:

Dermatologist*	Urologist
Nephrologist	Gastroenterologist
Pulmonologist	Psychologist
Toxicologist	Anesthesiologist
Cardiothoracic Surgeon	Radiologist & Imaging Facility

*\*The PCP may perform the services of the Dermatologist; however, all other specialty services must be performed by the designated specialist.*



### Initial Testing Checklist

Procedure	Procedure Code	Description	Allowable Fee	
Office Visit	99201	OV for new patient	\$60.00	<input type="checkbox"/>
Office Visit	99211	OV for established patient	\$32.00	<input type="checkbox"/>
Specimen Handling (age 15 and older)	99000	For conveyance of specimen to LabCorp	\$12.00	<input type="checkbox"/>
Venipuncture	36415	For conveyance of blood to LabCorp (use LabCorp form designed for Perrine-DuPont Biennial Testing)	\$10.00	<input type="checkbox"/>
Hemocult Test (age 18 & older)		Provide stool sample card to adult patients to be returned directly to LabCorp	Do not bill for this service.	<input type="checkbox"/>

Forms to be completed  
(Forms will be picked-up weekly by Perrine-DuPont Claims Office)

Form	Description		
Medicare Questionnaire	Patient to complete. Retain for weekly pick-up by Perrine-DuPont Claims Office	Do not bill for this service	<input type="checkbox"/>
Authorization to Retain Test Results	Patient to complete so test results can be used for scientific research. All results will be DE identified. Retain for weekly pick-up by Perrine-DuPont Claims Office	Do not bill for this service	<input type="checkbox"/>

Tests to be performed by LabCorp

LabCorp Test Number	Description
003772	Urinalysis, complete with microscopic examination
007625	Lead blood (adult)
007625	Lead blood (pediatric)
010173	Assay of beta-2 protein urine
001370	Creatinine serum
001040	Blood urea nitrogen (BUN)
004036	Urine pregnancy test (age 35 – 55)
182949	Occult blood, by fecal hemoglobin

## **EXHIBIT D**

DuPont's Preliminary Objections

LAW OFFICES  
THOMAS COMBS & SPANN, PLLC

P O BOX 3824  
CHARLESTON, WEST VIRGINIA 25338

300 SUMMERS STREET, SUITE 1380  
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: (304) 414-1800  
FACSIMILE: (304) 414-1801  
WEBSITE: [www.tcspllc.com](http://www.tcspllc.com)

DAVID B. THOMAS  
Direct Dial: (304) 414-1807  
E-mail: [jarnold@tcspllc.com](mailto:jarnold@tcspllc.com)

September 3, 2013

Edgar C. Gentle, III, Esquire  
Claims Administrator  
55 B Street  
P.O. Box 257  
Spelter, WV 26438

*Via Electronic Mail*  
[escrowagen@aol.com](mailto:escrowagen@aol.com)

Re: Perrine v. DuPont, Civil Action No. 04-C-296-2  
Proposed Report to the Court Respecting Second Round of  
Medical Monitoring Claimant Participation Issues

Dear Ed:

We received the proposed "Report to the Court Reflecting Second Round of Medical Monitoring Claimant Participation Issues" ("Report") which was forwarded to us by email on August 28, 2013, and which invited editorial suggestions by noon on September 3. This letter is to advise you of DuPont's objections to certain of the procedures proposed in the Report and to contents of Exhibits A and C. I summarize those objections below.

1. Publication of Remediation and Medical Monitoring Data. Issue A of the Report raises the question of providing the Medical Monitoring Claimants with data on soil and properties which tested "above safe levels of cadmium, arsenic as lead" and data on medical monitoring testing. The proposed letter including this data, Exhibit A to the Report, should not be published.
  - a. The idea of publishing this data is based upon unsupported and dubious premise that "a Medical Monitoring Claimant could make a more reasonable choice on whether to participate in the Program . . ." if provided that data.
  - b. The Memorandum of Understanding and the subsequent Orders of the Court do no permit the disclosure of testing data to members of either the Property Remediation or Medical Monitoring Classes.
  - c. Because you intend to disclose this data to the Court and Counsel under seal, you obviously recognize the privacy and confidentiality concerns which envelop the data. DuPont submits that the proposed disclosure of the data circumvents the Court's March 3, 2011 "Final Order Approving Protective Order and Confidentiality Agreement" and "Protective Order."
  - d. No good reason exists for the disclosure of property remediation data to Medical Monitoring Class Members.

## THOMAS COMBS & SPANN, PLLC

Edgar C. Gentle, III, Esquire  
September 3, 2013  
Page 2

- e. Property Remediation Class Members have not consented to the release of property remediation test data.
- f. You propose to publish data as summaries thereof without any opportunity or procedure permitting DuPont or any public health authority to evaluate or challenge that data.
- g. The third paragraph and Part III of Exhibit A would provide property remediation data impermissibly labeling certain test results as "hazardous."
  - i. The content of those portions of Exhibit A may cause unreasonable fear of risk of disease which is not supported by any medical or toxicological opinion based on a study of that data. Without specific findings of the quantities of metals at a specific location and an assessment of any health risk by a toxicologists and medical professional, the information sought to be disclosed provides little, if any, information of benefit to a Medical Monitoring Claimant, and disclosures of that information may lead to a health scare that is without medical or scientific basis.
  - ii. The property testing information Exhibit A seeks to disclosure will almost certainly have an adverse impact upon property values in the Class Area even after remediation should have removed or at least reduced any stigma to the properties within the Class Area. Owners of these properties should be protected from the dissemination of misleading information about any risk of harm from metals that have been removed from the Class Area.
  - iii. In paragraphs A and B of Part III of Exhibit A, you propose to report the percentages of Class Area houses and soil properties which "were found to have hazardous levels of arsenic, lead, cadmium and/or zinc." Yet during the August 22 quarterly meetings, you reported to the Finance Committee and Medical Monitoring Council that no abnormal levels of zinc have been found by the remediation testing to date.
- h. The third paragraph and Part II of Exhibit A would impermissibly provide medical monitoring testing data for the following reasons:
  - i. Participants in the Medical Monitoring Program have not consented to the release of their testing information to other members of the class and certainly not to the public. The only consent obtained from some of the participants was certainly not for the purpose now advanced by the Claims Administrator.
  - ii. The content of these portions of Exhibit A may cause unreasonable fear of risk of disease which is not supported by any medical or toxicological opinion based on a study of the data. Exhibit A makes no effort to link any of the exposure data to the "disease that has been detected." The use of these statistics without scientific analysis suggests that all of the abnormal test results are the result of exposure to arsenic, cadmium or lead from the smelter. DuPont argues that the absence of any such finding is

## THOMAS COMBS & SPANN, PLLC

Edgar C. Gentle, III, Esquire  
September 3, 2013  
Page 3

- indicative of the fact that no such link can be made. To imply such a link is not only inappropriate but also misleads the Medical Monitoring Class.
- iii. Further, these portions of Exhibit A make no effort to describe the background risks of the "disease that has been detected" and compare that background risk of disease to what the Medical Monitoring Program has found, much less any kind of statistical, scientific, or medical analysis to determine the extent to which any increased risk can be tied to the metals at issue as opposed to other causes.
  - iv. Exhibit A contains no description of the extent to which remediation in the class area and the passage of time have reduced the risk to claimants of the diseases for which the Medical Monitoring Program was established.
  - i. The proposed publication of this data raises too many questions and answers none.
    - (1.) What statistical evidence do you have showing there was an association between those properties that were remediated and participants who had elevated blood leads levels? What expert came to that conclusion?
    - (2.) What statistical evidence do you have showing there was an association between those properties that were remediated and participants who were referred to a specialist? What expert came to that conclusion?
    - (3.) What statistical evidence do you have showing the elevated blood levels were caused by exposure to lead from a property that had been remediated? What expert came to that conclusion?
    - (4.) What statistical evidence do you have showing the participants who were referred to a specialist had a disease caused by exposure to metals on properties that were remediated? What expert came to that conclusion?
  - j. Finally, the draft of Exhibit A twice contains the Claims Administrator's strong recommendation that the recipient/claimant participate in the second cycle of the Medical Monitoring Program. The Claims Administrator should not be making recommendations or expressing opinions to the Medical Monitoring Class. The Claims Administrator's role is to carry out the terms of the settlement reached by the parties.
2. New Medical Monitoring Cards. DuPont objects to the issuance of new Medical Monitoring Cards to each participant in the Medical Monitoring Program as an unnecessary expense. The only proposed changes to the existing Medical Monitoring Card are the addition of the telephone number of the Spelter Claims Office and the statement that the Medical Monitoring Program "is only for testing and not medical care." Both of these items of information are available to each participant in the Medical Monitoring Program through the Settlement's website and the newsletter.
3. One Mailing or Two. DuPont objects to multiple mailings informing participants of the commencement of the second two year cycle of testing.

## THOMAS COMBS & SPANN, PLLC

Edgar C. Gentle, III, Esquire  
September 3, 2013  
Page 4

- a. Multiple mailings create an unnecessary administrative expense.
  - b. Considerable expense and effort have been expended during the first testing cycle to create and maintain current and accurate contact information on each participant in the Medical Monitoring Program.
  - c. One mailing containing appropriate information necessary to participate in the second cycle of testing constitutes actual notice to the Medical Monitoring Class Members and is all the information for which DuPont should be required to pay under the Settlement.
  - d. The existing website [www.perrinedupont.com](http://www.perrinedupont.com) provides any interested Medical Monitoring Class Members with all the information necessary to participate in the Medical Monitoring Program.
4. Initial Screenings Medical Interview Form. DuPont does not object to the concept of an Initial Screening Medical Interview Form, but DuPont does object to the proposed content on the subject of CT scans.
- a. Exhibit C which we received the Report is incorrectly captioned "Physician Screeing [sic] Form."
  - b. References to CT Scans in Exhibit C fail to include the requirements for CT Scans as defined by the Medical Monitoring Program and should be included in the form. Participating physicians should be informed that the Medical Monitoring Program provides only CT scans which "are diagnostically medically necessary."
5. Measures to Schedule Claimants for Medical Monitoring. DuPont objects to the recommendation that the notice process for encouraging participants to schedule testing appointments based in the first cycle continue in the second cycle because those efforts in the first cycle did not produce demonstrable success.

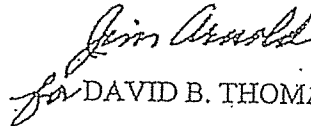
DuPont's objections regarding the expense of specific proposed procedures in the Report are prompted by the trend of administrative expenses consuming the lion's share of the Medical Monitoring Program budget. In fact, the 2014 Budget just adopted by the Court estimates that only \$408,855 will be paid out in Medical Monitoring Program benefits while incurring \$779,938 in administrative expenses in the next year. Thus, administrative expenses are predicted to consume 65.6% of the Medical Monitoring Program budget although Class Counsel's economic expert, Dr. Michael Brookshire, predicted that administrative expenses should consume little more than 10% of the Medical Monitoring Program budget.

DuPont intends to supplement its objections set forth above in a formal pleading to be filed on or before September 6, 2013, should you decide to proceed as outlined in the Report.

THOMAS COMBS & SPANN, PLLC

Edgar C. Gentle, III, Esquire  
September 3, 2013  
Page: 5

Sincerely,

  
for DAVID B. THOMAS

DBT/vrw

cc: Virginia Buchanan, Esq. (*Via E-Mail*)  
Meredith H. McCarthy, Esq.

## **Exhibit B**

Claims Administrator's September 6, 2013 Report to  
the Court Respecting Second Round of Medical  
Monitoring Claimant Participation Issues



PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
ATTN: EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
www.perrinedupont.com  
perrinedupont@gtandslaw.com

September 6, 2013

VIA HAND DELIVERY

The Honorable Thomas A. Bedell  
Circuit Judge of Harrison County  
301 West Main Street, Room 321  
Clarksburg, West Virginia 26301

Re: Perrine, et al. v. DuPont, et al.;  
Civil Action No. 04-C-296-2 (Circuit Court of Harrison County, West Virginia) -  
Fourth Proposed Settlement Administration Budget (for September 1, 2013  
through August 31, 2014) (the "Budget") Medical Monitoring Program  
Administrative Expenses; Our File Nos. 4609-1 {R}, 4609-1 {NN-5} and 4609-  
1{GG-13}

Dear Judge Bedell:

During this Court's August 22, 2013 Hearing to review the proposed Budget, DuPont's Counsel raised the issue of the ratio of Medical Monitoring Fund administrative expenses as compared to the Medical Monitoring Fund Medical Provider expenditures. DuPont's Counsel further mentioned the administration expense issue in its outreach critique letter that we submitted to the Court on September 3, 2013. Your Claims Administrator submits this Report for the purpose of providing further detail concerning the ratio of all categories of Medical Monitoring Program expenses.

Please note, as detailed in the Perrine DuPont Settlement Administration Budget No. 4 Medical Monitoring Settlement Program Post-Implementation Date Expenses attached as Exhibit A, that the projected Medical Provider expenses for the Budget period equal \$480,855 (or 41.8%) of the projected \$1,151,231 in Medical Monitoring Program expenditures for the Budget period (excluding FASB 5 Contingency Reserve expenses). The fees and expenses of your Claims Administrator account for approximately 20.2% of the Medical Monitoring Program Budget, while the Third Party Administrator (CTIA) fees and expenses account for approximately 30.4% of the Medical Monitoring Program Budget. The remaining 7.6% of projected expenditures consists of Guardian Ad Litem fees and the Finance Committee/Shared Common administrative expenses for both Settlement Funds. As discussed at the Hearing, CTIA's fees and expenses are part of the medical testing provisioning portion of the Budget, which includes Medical Providers and totals 72.2% (41.8% Providers and 30.4% CTIA). The Program is provided on a per unit of service method, with the Program paying for each unit of service that is provided only, and with the cost/unit being negotiated by CTIA. In our experience, this results in cheaper medical service than under alternative methods.

Please also note that after the August 22 Hearing, CTIA mentioned that, due to its efficacy in negotiating lower provider rates and laboratory fees, the ratio of service fees to total cost seems unusually high when compared to a typical medical plan. The average claim payment in the Medical Monitoring Program is approximately 1/3 of what one would find in a typical medical plan (\$51 average claim for the Medical Monitoring Program versus \$160 for a typical medical plan). The cost to process a \$51 claim and a \$160 claim are essentially the same, causing the ratio of CTIA's service fees compared to total claim costs to appear high. The average service fee per claim is only \$12.60 (a very competitive rate). Please see the Table from CTIA attached as Exhibit B. Thus, while the ratio of CTIA's expenses to overhead is increased as Medical Provider prices are decreased by CTIA, the Program realizes a net savings, to the benefit of the Program and DuPont.

As mentioned in prior years during the Budget approval process, the percentage of administrative expenses as compared to Medical Provider expenses will increase when Medical Monitoring Program turnout is low, as in round one at 50%, as some of the Medical Monitoring Program administrative expenses are fixed costs, thereby resulting in an increase in the percent of Medical Monitoring Program Fund administrative expenses.

We have shared this report with the Finance Committee and the Guardian Ad Litem for Children, and this submission reflects their input.

Should the Court have any further questions about this matter, please let us know.

Thank you for the Court's consideration.

Yours very truly,



Edgar C. Gentle, III

ECGIII/av  
Enclosures

cc: (with enclosures)(by e-mail)(confidential)  
David B. Thomas, Esq.  
James S. Arnold, Esq.  
DuPont Representatives on the Settlement Finance Committee

Virginia Buchanan, Esq.  
Plaintiff Class Representative on the Finance Committee

Meredith McCarthy, Esq.,  
Guardian Ad Litem for Children

Clerk of Court of Harrison County,  
West Virginia, for filing (via hand delivery)

September 6, 2013

Page 3

---

cc: (with enclosures)(by e-mail)(confidential)  
Terry D. Turner, Jr., Esq.  
Diandra S. Debrosse, Esq.  
Katherine A. Harbison, Esq.  
Michael A. Jacks, Esq.  
Mr. Billy Sublett  
William S. ("Buddy") Cox, Esq.  
J. Keith Givens, Esq.  
McDavid Flowers, Esq.  
Farrest Taylor, Esq.  
Ned McWilliams, Esq.  
Angela Mason, Esq.  
Mr. Don Brandt

# EXHIBIT A

Perfume Dupont Settlement Administration Budget No. 4  
 Medical Monitoring Settlement Fund - Post September 1, 2011  
 Implementation Date Expenses (Sept 1, 2013 Through Aug 31, 2014)

	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	TOTAL	Ratio
Claims Administrator Fees	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 10,450.00	\$ 123,800.00	20.22%
Third Party Administrator Fees (CTA)	\$ 31,111.00	\$ 11,556.00	\$ 46,464.00	\$ 43,591.00	\$ 35,448.00	\$ 33,583.00	\$ 31,113.00	\$ 27,362.00	\$ 25,483.00	\$ 30,167.00	\$ 23,059.00	\$ 11,505.00	\$ 350,442.00	30.44%
Provider Medical Monitoring Expenses	\$ 18,100.00	\$ 18,100.00	\$ 18,100.00	\$ 53,600.00	\$ 93,901.00	\$ 97,436.00	\$ 79,130.00	\$ 30,205.00	\$ 2,598.00	\$ 26,355.00	\$ 26,603.00	\$ 16,667.00	\$ 480,855.00	41.77%
Guardian Ad Litem Fees	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 60,000.00	5.21%
Finance Committee / Shared Common Expenses	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 1,969.50	\$ 27,134.00	2.36%
Total Fees/Expenses	\$ 75,580.50	\$ 56,075.50	\$ 90,933.50	\$ 123,560.50	\$ 155,718.50	\$ 157,385.50	\$ 136,612.50	\$ 83,096.50	\$ 54,450.50	\$ 82,891.50	\$ 79,531.50	\$ 54,571.50	\$ 1,151,231.00	

# EXHIBIT B

Perrine Budget Sep 2013 - Aug 2014

Category	Assumptions	1st Round	2nd Round Testing												Total
Service Fee	\$1.85 per participant per month. CTIA processed 7,306 claims in the 1st round of testing. An average service fee of \$12.50 per claim. Average payment was \$51.30 per claim.	\$9/11/13 \$85,723	SEP-13	OCT-13	NOV-13	DEC-13	JAN-14	FEB-14	MAR-14	APR-14	MAY-14	JUN-14	JUL-14	AUG-14	\$92,085
Consulting	70% of 1st round testing	\$512,441	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$7,674	\$92,085
Mark-Up of Communication Materials	same as 1st round	\$2,852	\$14,535	\$1,872	\$35,236	\$24,143	\$15,230	\$13,118	\$11,162	\$8,888	\$6,355	\$10,506	\$4,963	\$2,631	\$145,731
Letters	1st round increased by 50%	\$12,200	\$369	\$205	\$456	\$143	\$303	\$0	\$0	\$84	\$177	\$0	\$0	\$1,121	\$2,852
ID Cards	# of participants @ \$1.95	\$7,258	\$101	\$1,456	\$3,096	\$4,381	\$1,991	\$2,891	\$2,027	\$466	\$1,377	\$1,608	\$172	\$79	\$19,686
Report Fee	8 monthly reports @ \$350 each	\$1,050	\$8,089	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$8,089
Central Repository	estimated number of lab tests (1.5 x 1st round) @ \$5.50 each.	\$18,945	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$2,800
Claims Expense	1st round claims expense times 1.5	\$375,499	\$31,111	\$10,556	\$46,464	\$43,591	\$35,448	\$33,583	\$34,113	\$27,362	\$25,483	\$30,167	\$23,059	\$11,505	\$350,443
		\$273,259	\$18,000	\$18,000	\$18,000	\$53,600	\$93,901	\$97,436	\$79,130	\$30,265	\$21,598	\$26,355	\$26,603	\$16,667	\$480,555

## **Exhibit C**

Guardian Ad Litem for Children and Class Counsel  
Proxy's Response to the Claims Administrator's  
Reports



IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

Plaintiffs,

vs.

Case No. 04-C-296-2  
(Honorable Thomas A. Bedell)

E.I. DU PONT DE NEMOURS AND COMPANY,  
a Delaware corporation doing business in West  
Virginia; et al.,

Defendants.

SUBMISSION OF GUARDIAN AD LITEM IN  
SUPPORT OF CLAIMS ADMINISTRATOR'S  
COURT REPORT DATED SEPTEMBER 3, 2013

Now comes Meredith H. McCarthy, Guardian Ad Litem for the minor children and incompetent adults, and offers the foregoing support to the submission of the Claim Administrator's letter to the Court entitled *Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues* dated September 3, 2013. Preliminary objections filed by Defendant, E.I. duPont de Nemours and Company (hereinafter DuPont) will also be addressed herein. The issues to the Court are as follows:

- I. Should the Claimants be informed of the number of soil and house properties that were found to have cadmium, arsenic or lead above safe levels and should the Medical Monitoring Claimants be informed of the result of Medical Monitoring testing, in terms of disease that has been detected?

Yes. This generalized statistical information stemming from the results of both the Property Remediation Program and Medical Monitoring Program belongs to the Claimants by virtue of their status as parties to the litigation and settlement of the underlying action. Providing the summarized statistical results of both Programs to the Claimants supports the spirit of the lawsuit and gives them

knowledge of how their settlement money is being utilized.

DuPont generally objects to the release of this information for both Programs based upon the following: (a) concerns regarding Claimant privacy/confidentiality, (b) lack of consent by the Claimants, (c) the information may cause an unreasonable "health scare" and adversely impact property values and (d) that the data compiled was not independently challenged and would lead to presumptions not supported by statistical/medical or scientific analysis.

With regard to the Medical Monitoring Program data, the compilation of the statistical results of disease detection which is sought to be disclosed does not single out any Claimant or publish individualized information.<sup>1</sup> The Final Order Approving Protective Order and Confidentiality Agreement of March 4, 2011 protects individually identifiable Class Member confidential information, whether it is medical or property. Further, the information compiled by CTIA<sup>2</sup> and the Claims Office includes only data on the Claimants who consented to allow their results to be used for research. The fact that 93% of Claimants agreed to allow their depersonalized results be used for research, reveals an attitude among the Claimants for the importance of these types of publications.

As to whether the disclosure of Medical Monitoring Program results will cause an unfounded health scare, the lawsuit was initiated and ultimately settled due to the fear of increased health risks associated with exposure to the heavy metal waste materials released from the Spelter Smelter

---

<sup>1</sup> The disclosure of the information at issue is analogous to the publication of Annual WESTEST Results. Each year West Virginia 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Grade students standardized test results are statistically summarized by state proficiency results, county proficiency results and school proficiency results. The results are published and distributed to the elementary schools and parents for educational purposes. However, the confidentiality of any individual student is not compromised by the publication of the collective statistical results.

<sup>2</sup> CTIA is the Third Party Administrator for the Medical Monitoring Program.

Facility. Medical and scientific evidence of significant exposure to arsenic, cadmium and lead causing increased risk of disease was presented at trial by Drs. Werntz and Brown, which was accepted by the jury and West Virginia Supreme Court of Appeals. To restrict the collective statistical results of the Medical Monitoring Program based upon an alleged "health scare" seems inconsistent with the entire case. Further, DuPont's objection to disclosure of Property Remediation Results based upon concern for adverse impact upon property values is baseless. Again, the publication of the clean-up efforts and remediation of the contaminated homes and soil will only improve property values for the Class Areas and Claimants.

Finally, DuPont's objection that the data summaries at issue have not been independently challenged and could cause presumptions not supported by statistical/medical or scientific analysis is without merit. The statistical data sought to be disclosed for the Medical Monitoring Program is based upon the compilation of depersonalized test results of the participating Claimants. The summarized data was collected by CTIA, and based upon tests prescribed by Dr. Werntz via medical reports and invoices submitted by the participating physicians. All parties have had the opportunity to comment on and litigate the development of the Medical Monitoring Program, including the participating physician list.

The statistical data provided for the Property Remediation Program is based upon the compilation of the depersonalized soil and house results of the participating Property Claimants collected by the Claims Office from participating labs. The soil sampling results justifying clean-up are based upon trigger levels prescribed by the West Virginia Department of Environmental Protection "Voluntary Remediation and Redevelopment Rule" and Dr. Kirk Brown. The house sampling results justifying clean-up are based upon World Trade Center Indoor Environmental

Assessment. The methodology to be used by the Claims Office and technical advisor, Marc Glass, for the Property Remediation Program was discussed by Mr. Richard B. Adams, PE, BCEE at the fairness hearing on May 1-2, 2012, and published in a letter to the Court dated April 9, 2012. Thus, the underlying statistical summaries for both the Medical Monitoring Program and Property Remediation Program are based upon medical and scientific test results. While the interpretation of the data may change and inferences may or may not be drawn by the individual observer, the summarized statistical data collected by CTIA remains constant and reliable.

- III. In notifying the Claimants who checked the "YES" box, indicating they wanted Medical Monitoring, should all approximately 4,000 Claimants be notified or only the ones who participated in the first round of testing?

The opportunity to participate in the Medical Monitoring Program was a negotiated right extended to every member of the Class. *Order Resolving Medical Monitoring Program Issues in Preparation for November 1, 2011 Implementation Date* dated Oct. 21, 2011 and the *MOU* dated November 19, 2010. Thus, each Claimant who initially expressed an interest in participating in the Program should be notified of each and every round of testing.

- III. Should the Medical Monitoring Claimants get a new Medical Monitoring Card?

Yes. It is typical to issue new membership cards on a regular basis in provider type programs, such as health insurance programs, car insurance programs and American Association of Retired Persons (AARP). The additional information regarding medical testing and contact information on the new card will benefit the Claimant as well as the participating medical provider.

- IV. In notifying the Claimants of the Medical Monitoring Program, should there be one mail out or two?

In notifying the Medical Monitoring Claimants, there should be two mailings. The first

mailing is informational in nature, and geared to Medical Monitoring Program details. Whereas, the second mailing is Claimant specific in nature, and could include the new Medical Monitoring Card if granted by this Court. Throughout this litigation, the Court has witnessed the confusion that results from mailing which contain extensive amounts of detailed information.<sup>3</sup> The \$2,500.00 cost associated with the additional mailing is nominal as compared to the benefit of clarity and simplicity for the Claimant associated with the two mail outs.

V. Should an initial screening medical interview form be prepared?

Yes. The form proposed by the Claims Administrator, after collaboration with the participating physicians and CTIA, appears to be straightforward and may eliminate any discrepancies in the medical monitoring screening process. This standardized screening form would prove helpful if a Claimant chooses to see a different participating physician during the second or subsequent round of testing. Additional information regarding certain tests may be added to the form as proposed by DuPont, if deemed necessary by the participating physicians.

VI. What measures should be taken to schedule each Claimant for Medical Monitoring?

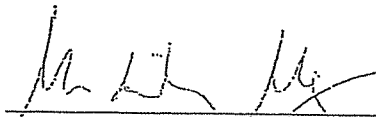
The "three strikes and your out" rule previously implemented by CTIA appears fair and reasonable. All counsel and the members of the Claimants Advisory Committee had an opportunity to critique the scheduling process, and ultimately agreed upon the current procedure. The mediocre participation results during the first round of testing do not justify a decrease in notice for scheduling opportunity to the Claimants.

---

<sup>3</sup> Testimony presented by Deficient Claimants at the Medical Monitoring Appeal Hearings and Property Remediation Reconsideration Hearings revealed the confusion caused to some of the plaintiffs with the class certification efforts and other cumbersome mail outs during the underlying litigation.

Based upon the foregoing, the undersigned counsel supports the Claims Administrator's proposals in the September 3, 2013, Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues, including the use of Exhibits A and C.

Respectfully submitted,



---

Meredith H. McCarthy, W.Va. Bar 7540  
*Guardian Ad Litem for class members that  
are minors or incompetent adults*  
901 W. Main St., Ste. 201  
Bridgeport, WV 26330  
(304) 842-9401

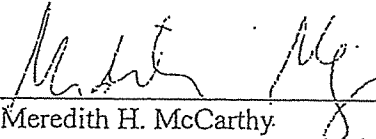
CERTIFICATE OF SERVICE

I, Meredith H. McCarthy, do hereby certify that I have this 6<sup>th</sup> day of September 2013, given notice of the filing of the foregoing *Submission of Guardian Ad Litem In Support of Claims Administrator's Court Report Dated September 3, 2013* upon the following counsel of record, by hand delivery or by depositing a true copy thereof in the United States Mail, postage prepaid, in envelopes addressed to:

Edgar C. Gentle, III, Esq.  
c/o Spelter Vol. Fire Dept. Office  
55 B. Street  
P.O. Box 257  
Spelter, WV 26438  
Claims Administrator

Virginia Buchannan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Raffety & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591

Jim Arnold, Esq.  
David Thomas, Esq.  
Thomas, Combs & Spann, PLLC  
P.O. Box 3824  
Charleston, WV 25338

  
Meredith H. McCarthy

## **Exhibit D**

DuPont's Response to the Claims Administrator's  
Reports



LAW OFFICES  
THOMAS COMBS & SPANN, PLLC

P O BOX 3824  
CHARLESTON, WEST VIRGINIA 25338

300 SUMMERS STREET, SUITE 1380  
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: (304) 414-1800  
FACSIMILE: (304) 414-1801  
WEBSITE: [www.tcspllc.com](http://www.tcspllc.com)

JAMES S. ARNOLD  
Direct Dial: (304) 414-1814  
E-mail: [jarnold@tcspllc.com](mailto:jarnold@tcspllc.com)

September 6, 2013

VIA FAX

The Honorable Donald Kopp, Clerk  
Circuit Court of Harrison County  
301 West Main Street  
Clarksburg, WV 26301

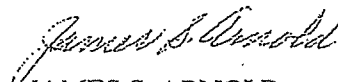
Re: Perrine, et al. v. E. I. du Pont de Nemours and Company, et al.  
Civil Action No. 04-C-296-2 (Cir. Ct. of Harrison County, W. Va.)

Dear Mr. Kopp:

Enclosed for filing in the above-referenced matter please find "DuPont's Objections to the Claims Administrator's 'Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues.'" The same has this day been served upon all counsel.

Your assistance in this matter is appreciated. If you have any questions, please do not hesitate to call.

Very truly yours,

  
JAMES S. ARNOLD

JSA/blm  
Enclosure

c/enc: Honorable Thomas A. Bedell (*Via Fax*)  
Virginia Buchanan, Esq. (*Via Electronic Mail and Regular U.S. Mail*)  
Edgar C. Gentle, III, Esq. (*Via Electronic Mail and Regular U.S. Mail*)  
Meredith McCarthy, Esq. (*Via Electronic Mail and Regular U.S. Mail*)

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 04-C-296-2  
(Judge Thomas A. Bedell)

E.I. DU PONT DE NEMOURS AND COMPANY,  
a Delaware corporation doing business in West  
Virginia, et al.,

Defendants.

**DUPONT'S OBJECTIONS TO THE CLAIMS ADMINISTRATOR'S  
"REPORT TO THE COURT RESPECTING SECOND ROUND OF  
MEDICAL MONITORING CLAIMANT PARTICIPATION ISSUES"**

Defendant E. I. du Pont Nemours and Company ("DuPont"), by counsel, submits its objections to the Claims Administrator's "Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues" ("Report"), submitted on September 3, 2011.

**Proposed Disclosure of Property and Medical Monitoring Test Data**

1. The Report poses the question:

"Should the Claimants be informed of the number of soil and house properties that were found to have cadmium, arsenic or lead above safe levels and should the Medical Monitoring Claimants be informed of the results of Medical Monitoring testing, in terms of disease that has been detected?" Report at 1.

The Claims Administrator attached as Exhibit A to the Report a proposed letter disclosing data purporting to relate to property remediation and medical monitoring testing. The proposed publication of this data is a bad idea, and Exhibit A, as presently written, misinforms and could frighten and confuse its intended audience – Medical Monitoring Claimants.

a. The idea of publishing the property and medical monitoring test data is based upon the unsupported and dubious premise that “a Medical Monitoring Claimant could make a more reasonable choice on whether to participate in the Program...” if provided that data. Report at 1.

b. The Memorandum of Understanding and the subsequent Orders of the Court do not permit or authorize the disclosure of testing data to members of either the Property Remediation or Medical Monitoring Classes.

c. Data obtained from both property and medical monitoring testing is confidential. The privacy and confidentiality concerns of the members of the classes in this litigation have been recognized by this Court. The disclosure proposed by the Report by and through Exhibit A would circumvent the March 3, 2011 “Final Order Approving Protective Order and Confidentiality Agreement” and “Protective Order.”

d. The Claims Administrator has offered no information to the Court or the parties about the knowledge or expertise of the individual(s) who created the numbers, percentages, and other data he proposes to publish in Exhibit A. Further, DuPont has been afforded no opportunity to evaluate or challenge this data.

e. Exhibit A employs the terminology “hazardous levels” of metals (Exhibit A at 1, 3) in property testing and “abnormal” test results in the Medical Monitoring Program (“MMP”) (Exhibit A at 1-3) without defining or explaining those terms. Thus, the Medical Monitoring Claimant who receives Exhibit A is left to his/her own devices to surmise what “hazardous levels” and “abnormal” results mean.

2. Disclosure of property test data to Medical Monitoring Claimants is inappropriate for the following reasons:

a. Property Remediation Class Members have not consented to the release of property remediation test data.

b. Exhibit A publishes the property test data in an inaccurate and misleading way:

(i) Exhibit A advises Medical Monitoring Claimants that “[i]n deciding whether to participate [in the MMP] this time, please note (i) \_\_\_\_% of houses tested in the Class Area and \_\_\_\_% of soils tested in the Class Area Zone 1A had hazardous levels of lead, cadmium, arsenic or zinc . . . .” Exhibit A at 1. The quoted statement unfairly assumes a knowledge and understanding on the part of the Medical Monitoring Claimant of the scope and existence of the various zones which constitute the Class Area, and the statement inaccurately implies a nonexistent relevance to Zone 1A test results to Medical Monitoring Claimants who did not or do not live in Zone 1A.

(ii) The quoted statement and paragraphs A and B of Part III of Exhibit A include zinc as one of the metals purportedly found in “hazardous levels.” Yet during the August 22, 2013 Quarterly Meeting of the MMP, the Claims Administrator advised that no hazardous levels of zinc have been found to date by property remediation testing.

c. The property testing information Exhibit A seeks to disclose will almost certainly have an adverse impact upon property values in the Class Area even after remediation should have removed or at least reduced any stigma to the properties within the Class Area. Owners of these properties should be protected from the dissemination of

misleading information about any risk of harm from metals that have been removed from the Class Area.

3. Disclosure of the medical monitoring test data proposed by the Claims Administrator is inappropriate for the following reasons:

a. The medical monitoring test data that the Claims Administrator proposes to publish includes an assertion of the number of “tests performed in the first round of testing. . . .” Exhibit A, Part II at 2. This number appears greatly exaggerated and inaccurate because that number is over 5 times the number of tests which the MMP has paid for and almost 5 times the number of test results stored in the database authorized by this Court. *See* CTIA’s confidential “Monthly Report, Period Ending July 31, 2013, The Perrine Medical Monitoring Plan” at 7, 15.

b. This questionable number of tests is used at the basis for then informing the Medical Monitoring Claimant of the percentage of “abnormal results” obtained by the MMP. Exhibit A, Part II at 2. If the number of total tests reported is inaccurate, the percentage assigned to alleged “abnormal results” also is inaccurate. This percentage is repeated in Exhibit A. *Id.*, Exhibit A at 1.

c. Exhibit A goes on to report the number of “tests . . . referred to specialists for diagnoses . . .” which number, if accurate, is so miniscule as to be statistically insignificant. Exhibit A, Part II at 2. However, this questionable number of referrals becomes the basis upon which the Claims Administrator calculates percentages of referrals related to “cancer and tumors (\_\_\_\_%), urinary diseases (\_\_\_\_%), skin disorders (\_\_\_\_%), respiratory diseases (\_\_\_\_%), heart diseases (\_\_\_\_%), endocrine disorders (\_\_\_\_%), and miscellaneous diseases (\_\_\_\_%).” The content of this portion

of Exhibit A may cause unreasonable fear of risk of disease which is not supported by any medical or toxicological opinion based on a study of the data. Exhibit A makes no effort to link any of the exposure data to the "disease that has been detected." The use of these statistics without scientific analysis suggests that all of the abnormal test results are the result of exposure to arsenic, cadmium or lead from the smelter. DuPont argues that the absence of any such finding is indicative of the fact that no such link can be made. To imply such a link is not only inappropriate but also misleads the Medical Monitoring Class.

d. Even if the test numbers and percentages are accurate, the proposed publication remains misleading because the number of medical monitoring participants this data represents is not disclosed. It is misleading to talk in terms of "abnormal tests" and to fail to disclose the number of participants tested who showed the "abnormal results." This point is also significant when addressing the number of referrals to specialists as reported by Exhibit A, Part II at 2. How many of the referrals were of or for the same Medical Monitoring Claimant?

e. Participants in the MMP have not consented to the release of their testing information to other members of the class and certainly not to the public. The only consent obtained from some of the participants was certainly not for the purpose now advanced by the Claims Administrator.

f. Further, these portions of Exhibit A make no effort to describe the background risks of the "disease that has been detected" and compare that background risk of disease to what the MMP has found, much less any kind of statistical, scientific, or medical analysis to determine the extent to which any increased risk can be tied to the metals at issue as opposed to other causes.

g. Exhibit A contains no description of the extent to which remediation in the class area and the passage of time have reduced the risk to claimants of the diseases for which the Medical Monitoring Program was established.

h. Finally, the draft of Exhibit A twice contains the Claims Administrator's strong recommendation that the recipient/claimant participate in the second cycle of the MMP. The Claims Administrator should not be making recommendations or expressing opinions to the Medical Monitoring Class. The Claims Administrator's role is as a neutral charged with carrying out the terms of the settlement reached by the parties.

#### New Medical Monitoring Cards

4. DuPont objects to the issuance of new Medical Monitoring Cards to each participant in the Medical Monitoring Program as an unnecessary expense. The only proposed changes to the existing Medical Monitoring Card are the addition of the telephone number of the Spelter Claims Office and the statement that the Medical Monitoring Program "is only for testing and not medical care." Report at 2. Both of these items of information are available to each participant in the MMP through the Settlement's website and the newsletter.

#### One Mailing or Two

5. DuPont objects to multiple mailings informing participants of the commencement of the second two year cycle of testing.

- a. Multiple mailings create an unnecessary administrative expense.
- b. Considerable expense and effort have been expended during the first testing cycle to create and maintain current and accurate contact information on each participant in the MMP.

c. One mailing containing appropriate information necessary to participate in the second cycle of testing constitutes actual notice to the Medical Monitoring Class Members and is all the information for which DuPont should be required to pay under the Settlement.

d. The existing website [www.perrinedupont.com](http://www.perrinedupont.com) provides any interested Medical Monitoring Class Members with the information necessary to participate in the MMP.

#### Initial Screenings Medical Interview Form

6. DuPont does not object to the concept of an Initial Screening Medical Interview Form, but DuPont does object to the proposed content on the subject of CT scans.

a. Exhibit C which we received the Report is incorrectly captioned "Physician Screeing [sic] Form." Report, Exhibit C.

b. References to CT Scans in Exhibit C fail to include the requirements for CT Scans as defined by the MMP and the Order of this Court and should be included in the form. Participating physicians should be informed that the MMP provides only CT scans which "are diagnostically medically necessary."

#### Measures to Schedule Claimants for Medical Monitoring

7. DuPont objects to the recommendation that the notice process for encouraging participants to schedule testing appointments based in the first cycle continue in the second cycle because those efforts in the first cycle did not produce demonstrable success. That is, up to three letters were sent to each Medical Monitoring Claimant who failed to schedule appointments for testing. Each of the letters provided the recipient with actual notice. If a Medical Monitoring



Claimant does not respond by scheduling an appointment, the Claimant should have to await the subsequent testing cycle to resume participating in the MMP.

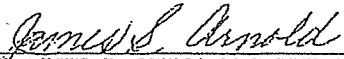
8. DuPont's objections regarding the expense of specific proposed procedures in the Report are prompted by the trend of administrative expenses consuming the lion's share of the Medical Monitoring Program budget. In fact, the 2014 Budget just adopted by the Court estimates that only \$480,855 will be paid out in MMP benefits while incurring \$779,938 in administrative expenses in the next year. Thus, administrative expenses are predicted to consume 65.6% of the MMP budget although Class Counsel's economic expert, Dr. Michael Brookshire, predicted that administrative expenses should consume little more than 10% of the MMP budget. *See* April 9, 2007 Brookshire Report, Appendix C; April 27, 2007 Deposition of Dr. Brookshire, p. 169.

WHEREFORE, DuPont urges this Court to reject the proposal to publish property and medical monitoring test results and to direct that the MMP to commence the send cycle of testing using reasonable procedures which eliminate unnecessary expense.

E.I. DU PONT DE NEMOURS AND COMPANY,

Defendant,

BY COUNSEL:

  
DAVID B. THOMAS (WV Bar No. 3731)  
JAMES S. ARNOLD (WV Bar No. 0162)  
THOMAS COMBS & SPANN, PLLC  
300 Summers Street, Suite 1380  
P. O. Box 3824  
Charleston, West Virginia 25338  
304.414.1800

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 04-C-296-2  
(Judge Thomas A. Bedell)

E.I. DU PONT DE NEMOURS AND COMPANY,  
a Delaware corporation doing business in West  
Virginia, et al.,

Defendants.

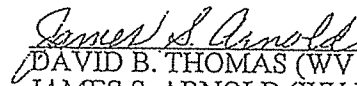
CERTIFICATE OF SERVICE

I, JAMES S. ARNOLD, counsel for defendant E.I. du Pont de Nemours and Company, hereby certify that service of "DuPont's Objections to the Claims Administrator's "Report to the Court Respecting Second Round of Medical Monitoring Claimant Participation Issues" has been made on the parties herein by via electronic mail and regular U.S. mail, this 6<sup>th</sup> day of September, 2013, addressed as follows:

Edgar C. Gentle, III, Esquire  
Claims Administrator  
55 B Street  
P.O. Box 257  
Spelter, WV 26438  
[escrowagen@aol.com](mailto:escrowagen@aol.com)  
*Claims Administrator*

Virginia M. Buchanan, Esquire  
Levin Papantonio Thomas Mitchell  
Rafferty & Proctor P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
[vbuchanan@levinlaw.com](mailto:vbuchanan@levinlaw.com)

Meredith McCarthy, Esq.  
901 W. Main Street, Suite 201  
Bridgeport, WV 26330  
[mhmccarthy@citynet.net](mailto:mhmccarthy@citynet.net)

  
\_\_\_\_\_  
DAVID B. THOMAS (WV Bar No. 3731)  
JAMES S. ARNOLD (WV Bar No. 0162)  
THOMAS COMBS & SPANN, PLLC  
300 Summers Street, Suite 1380  
P. O. Box 3824  
Charleston, West Virginia 25338  
304.414.1800