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September 23, 2014

CLAIMS ADMINISTRATOR'S REPORT REQUESTING/ COURT AUTHORIZATION TO TRANSFER THE REMAINING ASSETS OF THE PRE-IMPLEMENTATION DATE FUNDING OF THE PERRINE MEDICAL MONITORING QUALIFIED SETTLEMENT FUND TO THE POST-IMPLEMENTATION DATE FUNDING OF THE PERRINE MEDICAL MONITORING QUALIFIED SETTLEMENT FUND AND THEREBY CLOSE THE ACCOUNTS OF THE PRE-IMPLEMENTATION DATE FUNDING

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) - Claims Administrator's Report Requesting Court Authorization to Transfer the Remaining Assets of the Pre-implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund to the Post-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund and Thereby Close the Accounts of the Pre-Implementation Date Funding (the "Report"); Our File No. 4609-1 {D}**

Dear Judge Bedell:

The purpose of this memorandum and the enclosed Report is to suggest how to wrap up the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund by transferring its assets to the Post-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund.

After consultation with the Finance Committee and the Guardian Ad Litem, we suggest that the remaining hard assets (half of the car, some equipment and Claims Office furnishings, with the other half being owned by the Perrine DuPont Remediation Qualified Settlement Fund) and

monetary assets in the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund be transferred into the Post-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund. The remaining monetary assets in the Pre-Implementation Date Funding total approximately $26,000, which is too small of an amount to provide an additional cash dividend to medical monitoring claimants, of which there are approximately 6,100. As you know, the implementation date for Medical Monitoring testing was November 1, 2011.

The Memorandum of Understanding for the Settlement and prior Orders of the Court, which are outlined in the attached Memorandum, indicate that the Pre-Implementation Date Funding was to be used for the sole benefit of the Medical Monitoring Class, and was to be used specifically for providing cash payments to Medical Monitoring Class Members and to pay for the pre-implementation date administrative start-up expenses. These obligations have both been met.

Your Claims Administrator believes that the simplest and cheapest course to wrap up the Pre-Implementation Date Funding is to transfer all of its assets to the Post-Implementation Date Funding, where they will continue to benefit the Medical Monitoring Class in the only remaining way possible, thereby closing the accounts of the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund.

We have shared this Report with the Finance Committee and the Guardian Ad Litem for children, and we have taken into account their suggestions and concerns.

A proposed Order approving the transfer of the remaining assets of the Pre-Implementation Date Funding for the Perrine Medical Monitoring Qualified Settlement Fund to the Post-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund, and close the accounts of the Pre-Implementation Date Funding, is provided for the Court's convenience.

Thank you for the Court's consideration.

Yours very truly,

Edgar C. Gentle, III
Claims Administrator

ECGIII/maj
Attachments

1. Memorandum Regarding Wrapping Up the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund
2. Proposed Order

cc: (with enclosures)(by e-mail)
Virginia Buchanan, Esq.
David B. Thomas, Esq.
James S. Arnold, Esq.
Meredith B. McCarthy, Esq.
Clerk of Court of Harrison County, West Virginia, for filing (via hand delivery)
Terry D. Turner, Jr., Esq.
Diandra S. Debrosse-Zimmermann, Esq.
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J. Keith Givens, Esq.
McDavid Flowers, Esq.
Farrest Taylor, Esq.
Ned McWilliams, Esq.
Angela Mason, Esq.
Mr. Don Brandt
Mr. Randy Brandt

MEMORANDUM

TO: Edgar C. Gentle, Esq.

FROM: Michael Jacks, Esq.

DATE: August 29, 2014

RE: Perrine DuPont Settlement; Our File No. 4609-1 {GG-15}

Research as to Wrapping Up the Medical Monitoring Pre-Implementation Date Fund

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I have researched the Memorandum of Understanding and prior Orders of the Court as to the pre-implementation date funding for the Medical Monitoring Program.

As you know, DuPont agreed to make a separate four million dollar ($4,000,000.00) payment from the general settlement fund of sixty-six million dollars ($66,000,000.00) for pre-implementation date medical monitoring funding.

The pre-implementation date funding was for two purposes. The first purpose was to provide cash payments to the medical monitoring class, and the second was to fund administrative expenses until the implementation of medical monitoring testing, at which time DuPont would provide additional funds. Both of these purposes have been met. There is a leftover balance of approximately $26,000, which is far too small to allow an additional dividend payment to medical monitoring class members, of which there are approximately 6,100. The common language in the Court documents is that the pre-implementation date fund was to be used for the "sole benefit" of the medical monitoring class, and as such, I suggest simply transferring the money into the post-implementation date fund.

My research and applicable quotations from the documents is below.

The first document where the four million dollar payment is mentioned is the Memorandum of Understanding, which was executed on November 19, 2010. Paragraph 2. c. on page 1 states that, "[t]he remaining $4,000,000.00 of the total $70,000,000.00 payment shall be made available only for a cash payment program for the medical monitoring sub-class of Plaintiffs as directed by the Court. Said sum shall not be used for any purpose other than for the sole benefit of the medical monitoring sub-class." Attachment 1.

The pre-implementation date funding was next addressed in the Court's "Final Order Approving Settlement," entered on January 4, 2011. Page 14 of the Order states that, "[t]he remaining four million ($4,000,000.00) of the total seventy million ($70,000,000.00) payment shall be made available only for the medical monitoring sub-class of Plaintiffs as directed by the Court, or the Court's designee. Said sum shall not be used or any purpose other than for the sole benefit of the medical monitoring sub-class and shall be deposited in the Qualified Settlement Fund Account created solely for this amount and this purpose." Attachment 2.

Next, the Parties and the Claims Administrator executed the "Stipulation of Parties and Settlement Administrator," on January 10, 2011. On Page 2 it states that "...DuPont will not be billed for or responsible for any associated costs or expenses until the testing actually commences. At such time as the testing commences, DuPont will begin to pay for the medical monitoring program, including administration and testing expenses." Attachment 3.

Finally, the pre-implementation date funding was addressed in the "Final Order Setting Forth the Scope and Operation of the Medical Monitoring Plan," entered on January 18, 2011. On pages 10 and 11 it states that:

> In regards to the four (4) million dollar ($4,000,000.00) fund specifically ear-marked for cash payments to the medical monitoring class by the Memorandum of Understanding, the Court makes the following Orders:
>
> i. The four (4) million dollar ($4,000,000.00 fund is specifically for the sole benefit of the medical monitoring class and shall provide cash payments to the same, in a form or fashion to be determined by the Finance Committee and Claims Administrator and approved by the Court.
>
> ii. There shall be two separate lists of medical monitoring claimants: the first shall be for only cash payments, and the second shall be for medical monitoring. Class members may sign up for either or both lists.
>
> iii. There shall be no requirement that a medical monitoring class member register for or avail themselves of the medical monitoring program or service in order to receive a cash payment from the medical monitoring fund, provided that class membership is proven.
>
> The money to fund the administrative start-up expenses of the medical monitoring program, including providing notice to potential class members, shall come from the four million dollar ($4,000,000.00) Qualified Settlement Fund. The Court finds that the most equitable solution to funding the start up costs of the medical monitoring program is to have only those individuals who are members of the medical monitoring class shoulder the burden. Distribution of start up expenses from the sixty-six million dollar fund would negatively impact those property class members who do not participate, or are not eligible to participate, in the medical monitoring program.

This Order is Attachment 4.

Please let me know if you need anything further.

ATTACHMENT 1

MEMORANDUM OF UNDERSTANDING

Lenora 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.)

Comes now this 19th day of November 2010 the Plaintiffs in the above-captioned matter by Ed Hill, Esq. and comes the Defendant E.I. du Pont de Nemours and Company ("Defendant")in the above-captioned matter by James B. Lees Jr., Esq. and hereby set forth the terms and conditions of a proposed global resolution of this pending litigation as between these parties:

1. Plaintiffs shall dismiss any and all pending claims against Defendant with prejudice and shall release Defendant from any and all liability in this litigation, except as provided by this agreement.

2. The Defendant shall pay to the Plaintiffs the sum of $70,000,000.00 plus medical monitoring consistent with the Court Order dated February 25, 2008, as only modified by this agreement; under the following terms and conditions:

a. Although the parties understand that the final date of payment by Defendant to Plaintiffs depends on a number of factors and cannot be guaranteed, the parties agree to make all reasonable efforts to accomplish payment of the $70,000,000.00 from Defendant to a Qualified Settlement Fund on or before December 31, 2010.

b. $66,000,000.00 of the total $70,000,000.00 payment shall be available to the Plaintiffs as directed by the Court for the purposes of paying for remediation services, medical monitoring costs and expenses, and attorney fees and expenses.

c. The remaining $4,000,000.00 of the total $70,000,000.00 payment shall be made available only for a cash payment program for the medical monitoring sub-class of Plaintiffs as directed by the Court. Said sum shall not be used for any purpose other than for the sole benefit of the medical monitoring sub-class.

3. In addition to the above, Defendant shall provide on a pay-as-you-go basis a medical monitoring program for all enrolled Plaintiffs consistent with the previous referenced Court Order as only modified by this agreement, under the following terms and conditions:

a. There shall be an initial enrollment period of six (6) months beginning at a time reasonably determined by the Settlement Administrator for all Plaintiffs at which time any Plaintiff may enroll in the medical monitoring program to avail themselves of the future monitoring benefits of the program. No Plaintiff shall be entitled to participate in said program unless they have enrolled during the initial six (6) month enrollment period.

b. After said enrollment period has expired, a Finance Committee comprised of representatives from class counsel, DuPont, and the Settlement Administrator shall be created for purposes of advising the Court on the structure and execution of the medical monitoring program. On an annual basis the Court, with the recommendation of the Finance Committee, shall direct DuPont to pay a sum certain that will be set aside for each such calendar year that reasonably secures such expenditures for each such calendar year. In each subsequent year after year one DuPont shall be credited with any amounts remaining from the prior year in determining the amount of payment for the subsequent year.

c. The program shall provide those examinations and tests set forth in the Court's Order of February 25, 2008 with the exception that no routine CT scans shall be performed as part of the medical monitoring program. The Defendant does agree to provide CT scans that are diagnostically medically necessary as determined by a competent physician as relevant to possible exposure to the heavy metal contamination at issue in this litigation.

d. Additionally, after the initial six (6) month sign-up period has concluded and the number of participating Plaintiffs, be they adults or minors, is known, the Defendant in the ordinary course of their business shall set aside reasonable reserves as required by applicable law which shall cover the estimated cost of such medical monitoring program.

e. Public notice to class members to notify them of the initial six (6) month sign-up period shall be deemed sufficient if done on a state-wide basis. All advertising and other costs associated with any and all notice requirements under this agreement shall be paid from the $1,000,000.00 start-up expenses referenced above. Notice of this settlement and court costs shall be paid by the defendant.

f. It is contemplated by the parties that a Finance Committee shall exist for purposes of helping provide guidance and advice for the operation of this medical monitoring program with each party hereto having one (1) representative on said Committee. In the event any decision is reached with respect to the payment for services or costs in the medical monitoring program to which the Defendant takes exception, the Defendant shall have the right to have such objection or exception reviewed by the Court and,

if necessary, appealed within the West Virginia judicial system.

4. Defendant reserves the right to reasonably challenge the enrollment of any Plaintiff in the medical monitoring program and/or property remediation class. With respect to any challenge relevant to the issue of eligibility for enrollment the challenger shall pay reasonable costs and attorney fees if the challenge is not successful.

5. It shall be expressly understood by the parties that Defendant shall not be responsible for the payment of any other monies for any purposes associated with the execution of this agreement and that any and all Plaintiff attorney fees and Plaintiff expenses associated with the execution of this agreement shall come from the $70,000,000.00 paid by the Defendant pursuant to this agreement.

6. It is expressly understood by the parties that no part or portion of the payments agreed to by the Defendant pursuant to this agreement are or should be considered a compromise or settlement of any punitive damage award returned against the Defendant, which shall now be vacated.

7. The parties agree that pursuant to any final settlement of this matter the Court, if at the conclusion of the Fairness Hearing approves the final settlement of this matter, will vacate any and all prior judgments relevant to this matter and enter a new judgment order accurately reflecting the terms and conditions of the final settlement of this matter.

8. Any and all pending motions and/or unresolved issues shall be deemed moot by this agreement, including, but not limited to, the pending motion for sanctions filed by the Plaintiffs in this action.

9. Plaintiffs shall maintain any and all copies, including electronic copies, of discovery which has been produced by Defendant to Plaintiffs in this litigation in a manner consistent with all Protective Orders entered in this case, and any and all Protective Orders are understood to continue in effect.

10. In the event members of the Plaintiff class are legally permitted to opt-out of this settlement at the discretion of the Court, the participation rate of the Plaintiffs participating in a final settlement of this matter, consistent with the terms and conditions set forth herein, must equal or exceed 90%. If this 90% participation rate is not achieved, Defendant shall have the option to void the settlement. However op-outs totaling 10% or less shall not reduce DuPont's obligations under this agreement.

11. Defendant understands and agrees that this proposed agreement must be approved by the Plaintiffs' class representatives and the Court pursuant to a Fairness Hearing and that counsel for the Plaintiffs shall strive to obtain such approval of the class representatives by the close of business on Monday November 22, 2010. Plaintiffs understand and agree that this proposed agreement must be approved by certain officers within the Defendant organization and that Defendant shall strive to obtain that approval by the close of business on Monday November 22, 2010. It is understood that neither party currently has legal authority to bind their respective clients today, but does agree to make a good faith effort to obtain the approval of the terms and conditions of this Memorandum of Understanding by their respective clients by the close of business on Monday November 22, 2010.

Agreed to:

Lenora Perrine, et al. by

B. Edison Hill

E.I. du Pont dee Nemours and Company et al. by

Dated: November 19, 2010

ATTACHMENT 2

See Page 17

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. DU PONT DE NEMOURS AND COMPANY, et al.,

Defendants.

FINAL ORDER APPROVING SETTLEMENT

Presently pending before the Court is the proposed settlement and compromise of this case, as incorporated in a Memorandum of Understanding prepared and executed by the Parties on November 18, 2010. In light of the challenges and nuances of the continued mass litigation presented by this case, the Parties have agreed to settle their dispute.

This settlement resolves a class action which is larger than any before seen in Harrison County, and is one of the largest in the history of the judicial system of West Virginia. The Court Record, which consists of all the motions, briefs, documents and other filings made by the Parties over the nearly seven years since this case filed, currently encompasses thirty thousand three hundred and fifteen (30,315) pages, and it will continue to expand.

This case has taken on a life of its own; it has grown larger than any one attorney or firm, and beyond the individuals who make up the Plaintiff classes. This case has

been before the Federal Court for the Northern District of West Virginia, it has spent more than two years on appeal before the West Virginia Supreme Court of Appeals, and it has spent many years before this Court. Despite all of the work and time of so many people,[1] this case has not reached an end within the judicial system.

There have been many battles fought by the Parties and both sides have had victories. However, winning a battle or a skirmish does not end the war. The potential for lengthy future conflict still looms on the horizon, and, without this settlement, this war is not over.

Presently before the Court is the "Motion and Memorandum in Support of Motion for Final Approval of Proposed Class Settlement, Approval of Class Notice, and Class Representative's Incentive Award," filed by Counsel for the Plaintiffs on December 20, 2010.

The Parties appeared by counsel on December 30, 2010, at a fairness hearing and presented to the Court a proposed compromise and settlement through counsel Farrest Taylor, Virginia Buchanan, Mark Proctor, Edison Hill, Angela Mason and Perry Jones. The Defendants were represented by James Lees, David Thomas, and Stephanie Thacker. The previously appointed Guardian *ad litem*, Meredith McCarthy, appeared on behalf of the minors and incompetents in the classes.

The Court heard the evidence and representations of counsel for the Plaintiffs, who presented the testimony of Edgar C. Gentle, the previously appointed settlement and claims administrator, Lenora Perrine and Carolyn Holbert as members of the

[1] The Plaintiffs' attorneys have documented more than fifty-five thousand hours of work and the Defendants' attorneys have surely billed as many hours, and likely more.

classes, and Barry Hill, as an expert witness in support of the claimed attorneys' fees and expenses. These witnesses spoke in support of the nature and fairness of the proposed settlement. Edgar Gentle testified as to the nature of the proposed administration of the settlement. The Court also permitted an opportunity for any Class members having objection to the settlement of the case to be heard. Thereafter, the Court heard the viewpoints and arguments of Burl Davis, Albert Shaffer, Craig E. Ferrell, Thelma Valerio, and Hubert E. Ferrell.

The only class member who was adamantly against the settlement was Burl Davis, while others presented questions as to the nature and effect of the settlement, and the availability of cash payments instead of remediation or medical monitoring services, and these questions were addressed by Counsel for the Plaintiffs and Mr. Gentle. Even Mr. Davis's objection was based upon his belief that he would get "nothing" and his home's value would not increase due to contamination in the area in and around Spelter. However, although the final amount is yet to be determined, there will be tens of millions of dollars available for remediation of property which will help to increase home values in the class area.

After reviewing the proposed settlement and hearing the evidence presented by the Parties, as well as carefully considering the viewpoints of the class members, the Court hereby ORDERS that the Proposed Settlement be APPROVED.

The pertinent background is set forth below:

FACTUAL BACKGROUND

1. This action was filed on June 15, 2004, against Defendants E.I. du Pont de Nemours and Company ("DuPont"), T. L. Diamond & Company, Inc., Meadowbrook

Corporation, Matthiessen & Hegeler Zinc Company, Inc., Nuzum Trucking Company ("Nuzum"), and Joseph Paushel ("Mr. Paushel")(collectively "Defendants").

2. On September 14, 2006, this Court granted class certification and certified both a Property Class and a Medical Monitoring Class ("Plaintiff Classes") in this case pursuant to the provisions of Rule 23 of the West Virginia Rules of Civil Procedure. Upon appeal, the certification of both classes was upheld by the Supreme Court. "Having found no error in the circuit court's disposition of each of the elements to be considered in certifying a class under Rule 23(a) and (b), we find that certification was proper. Consequently, DuPont's claim that class certification violated its due process rights by preventing it from presenting individualized evidence and individualized defenses is without merit." *Perrine v. E.I. du Pont de Nemours and Co.*, 225 W.Va. 482, ___, 694 S.E.2d 815, ___, (2010).

3. The Court approved Plaintiffs' notice plan on December 21, 2006, which gave absent Class members until February 15, 2007, to opt out or exclude their claims from this litigation. The Notice specifically informed the Class members: "If you are a member of the Property Class and/or Medical Monitoring Class and do not request exclusion from the class action, you will be bound by any judgment whether favorable or not, or any settlement in this case."[2] Following this Notice, a number of persons and entities opted out.

[2] The Court notes that the Defendant has filed a "Memorandum of Law on Opt-Out Exclusion From the Certified Classes." However, the issue argued by the Defendant (that there should be no second chance for class members to opt out) is not before the Court. None of the class members have argued that they have the right to opt out of the settlement either in writing or at the Fairness Hearing. Accordingly, the Court will not address the issue.

4. Prior to the 2007 trial of this Class Action, the Plaintiff Classes agreed to dismiss Defendants Mr. Joseph Paushel and Nuzum. As a result, on or about March 5, 2007, this Court dismissed Defendants Mr. Paushel and Nuzum, with prejudice.

5. After extensive discovery and pre-trial litigation, this matter proceeded to trial beginning on September 10, 2007, and the trial lasted for approximately six (6) weeks. The trial consisted of four (4) phases, and the jury returned verdicts in favor of the Plaintiffs. The verdicts were ultimately rendered as awards of fifty-five million five hundred and thirty-seven thousand five hundred and twenty-two dollars and twenty-five cents ($55,537,522.25) for property damage and associated remediation costs, an estimated award of approximately one hundred and thirty million dollars ($130,000,000.00) for a future medical monitoring program to last for forty (40) years, and a punitive damages award of one hundred and ninety-six million and two hundred thousand dollars ($196,200,000.00).

6. Said verdicts were the result of the jury finding that the Plaintiffs' property and persons were exposed to elevated and dangerous levels of lead, cadmium, and arsenic, among other heavy metals, due to the long operation of a smelting facility in Spelter which polluted the class area.

7. On November 16, 2007, this Court entered an Amended Final Judgment Order finalizing the jury's verdict in the amounts described above against Defendant DuPont.

8. Thereafter, both the Plaintiffs and Defendants appealed numerous aspects of this Court's pre-trial, trial, and post-trial rulings to the West Virginia Supreme Court of Appeals.

9. On March 26, 2010, after a lengthy appellate process, the West Virginia Supreme Court of Appeals remanded this litigation to the Court with directions to conduct a trial on DuPont's statute of limitations defense. The opinion, when counting the pages of the majority and individual concurring and dissenting opinions, was the longest ever written by the Supreme Court.

10. The Supreme Court modified the punitive damages award, but conditionally affirmed the remainder of the verdict, which then consisted of approximately three hundred million dollars ($300,000,000.00). The Supreme Court determined that this Court erred in granting judgment as a matter of law in favor of the Plaintiffs on the affirmative defense of the statute of limitations, and directed this Court to hold a second trial to determine if the defense was merit worthy.

11. The effect of the Supreme Court's directive created an all or nothing proposition for the Parties. If the Plaintiffs prevailed on the statute of limitations issue, they would receive the relief obtained in the 2007 trial, as modified by the Supreme Court opinion. If DuPont prevailed, this Court would set aside the 2007 verdicts and render judgment in favor of DuPont, and the Plaintiffs would receive nothing. *Perrine v. E.I. du Pont de Nemours and Co.*, 225 W.Va. 482, ___, 694 S.E.2d 815, 854 (2010).

12. The Plaintiffs and Defendant both considered the directives of the Supreme Court's opinion and prepared for trial, which was set for the month of March, 2011. The Parties reached this settlement after considering the substantial amount of risk and expense remaining in the case for both sides. On November 19, 2010, the Parties advised the Court that a proposed compromise and settlement had been reached. Thereafter, on November 24, 2010, the Court set a December 30, 2010,

Additionally, said class definitions for the medical monitoring class were modified by the June 14, 2007, "Order Granting Plaintiffs' Motion to Modify Class Definition and Denying Defendant DuPont's Motion to Decertify Class." For purposes of clarity, the Proposed Settlement affects the following classes as previously defined by Order of this Court.

a. The Property Class consists of "those who currently own, or who on or after December 1, 2003, have owned private real property lying within the below referenced communities or any other private real property lying closer to the Spelter Smelter facility than one or more of the below referenced communities." (Sept. 14, 2006, Order at 3).

b. The Medical Monitoring Class consists of "those who currently or at any time in the past since 1966 have resided on private real property in the Class Area for at least the minimum total residency time for a zone depicted on the map attached hereto as Exhibit A:[4] Zone 1: Minimum total residency time of one year since 1966. Zone 2: Minimum total residency time of three years since 1966. Zone 3: Minimum total residency time of five years since 1966. Residency time within a zone or zones closer to the former smelter facility but not meeting the minimum total residency time for a closer zone is accumulated with any residency time within a zone or zones further away in determining total residency time." (June 14, 2007, Order)

[4] Said Legal Notice, including the map with zones 1, 2, and 3, is attached as Exhibit 1 to this Order.

c. The General Provisions as to the geographic area are described as follows, and the Court further incorporates the boundary map as prepared and attached to this Order as Exhibit 1 to be read in concert with the following description:

> i. "General Provisions. The initial proposed class area includes the following communities within Harrison County, West Virginia, and all other private real property lying closer to the Spelter Smelter facility than one or more of these communities: Spelter, Erie, Hepzibah, Lambert's Run, Meadowbrook, Gypsy, Seminole, Lumberport, Smith Chapel, and as further modified to include additional impacted areas as described in Plaintiffs' air model. The Court finds that private real property lying within these communities, as well as any other private real property lying closer to the Spelter Smelter facility, has been impacted by the release of hazardous substances at or from the Spelter Smelter facility." (Sept. 14, 2006, Order at 4).

4. In assessing the "fairness" of a proposed settlement, the Court has considered the following four factors as provided by persuasive common law from the Federal District Court of the Eastern District of Virginia: 1) the posture of the case at the time the settlement was proposed; 2) the extent of discovery that had been conducted; 3) the circumstances surrounding the negotiations; and 4) the experience of counsel in the area of class action litigation. *In re MicroStrategy, Inc. Securities Litigation*, 148 F.Supp.2d 654, 663-665 (E.D. Va. 2001); *Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F.Supp 499, 501 (E.D. Va. 1995).

5. The Court finds that the Settlement in this action satisfies the fairness test because it has been negotiated between counsel who are experienced litigators and can accurately weigh the potential risk of a trial on the statute of limitations defense. This action has been pending for nearly seven years. In that time, the Parties have

actively pursued discovery, pre-trial litigation, a lengthy trial, and a lengthy appellate process.

6. Class Counsel, with the aid of their experts, has been able to determine the nature and strength of the Class Members' claims and to make reasonable calculations as to damages. Additionally, DuPont has been able to weigh their chances at trial in light of the original verdict and post-judgment interest. Both Parties are represented by able counsel who are experienced in class action litigation and who have spent tens of thousands of hours litigating this case. Therefore, under the four factors enumerated above, this settlement meets the fairness test because: (1) there is a substantial amount of risk facing both sides such that the settlement provides a fair compromise of the previously rendered verdict, (2) discovery has been extensively conducted and the Parties are well aware of the facts of the case, (3) the negotiations for the settlement were formally and fully conducted at arms length, and (4) both Parties are ably represented by experience counsel.

7. In determining the "adequacy" of the settlement, the Court looks to the following: 1) the relative strength of the Plaintiffs' case on the merits; 2) the existence of any difficulties of proof or strong defenses the Plaintiffs are likely to encounter if the case goes to trial; 3) the anticipated duration and expense of additional litigation; 4) the solvency of the Defendants and the likelihood of recovery on a litigated judgment; and 5) the degree of opposition to the settlement. *MicroStrategy*, 148 F.Supp.2d 665; *see also Strang*, 890 F.Supp at 501

8. The Court also finds that the Settlement satisfies the adequacy test. There is no certainty that the Plaintiffs will prevail at trial if the Settlement is not

approved. The sole issue of statute of limitations presents an all-or-nothing defense such that if Defendants were to prevail, the Plaintiffs would receive nothing. Alternatively, if Plaintiffs were to prevail at the trial, the case would nonetheless continue for years in appeal and the Defendants, unless they found relief on appeal, would be liable for approximately three hundred million dollars ($300,000,000.00), plus post-judgment interest accruing since 2007. Accordingly, both Parties are intimately familiar and engaged with this case, and have been able to negotiate a fair and adequate settlement to eliminate the risk presented to both sides by the second trial and future appellate litigation. Finally, despite the Settlement Notice provided to the Classes, there has been very little opposition voiced against the settlement. There were only two (2) written objections filed against the settlement, and the substance of the objections was against the claimed litigation expenses of the Attorneys, not the fairness of the settlement. Further, of the class members who spoke at the fairness hearing, only two were strongly opposed to the settlement, and both seemed to believe that cash payments based on the amount of the original verdicts were superior to remediation and medical monitoring plans. There are an estimated eight thousand five hundred (8,500) medical monitoring class members, and approximately two thousand eight hundred (2,800) property parcels in the two classes, and only two people voiced written opposition, and only one person voiced opposition to the settlement at the hearing. Therefore, the Court finds that there is not strong opposition to the settlement from within the classes.

9. Accordingly, the Court finds that the Settlement meets the adequacy test because although the Plaintiffs have a conditionally affirmed verdict, they face a

substantial challenge in overcoming the Defendants' statute of limitations defense. Without a settlement, litigation in this case would continue for a minimum of three to five (3-5) years, as the verdict at the second trial on the statute of limitations would be appealed to the West Virginia Supreme Court of Appeals by the losing party, and potentially appealed to the United States Supreme Court thereafter. Finally, there is very little opposition to the settlement from the Plaintiff Classes.

10. The Court-appointed Guardian *ad litem* in this case has stated to the Court that she has conducted an independent investigation into the facts contained in the record, the Petition for Approval of Settlement, and the Memorandum of Understanding between the Parties, and that the proposed settlement is fair, just, reasonable, equitable, and in the best interests of any minor members of the Plaintiff Classes.

11. The Court FINDS in view of all of the circumstances that the proposed settlement is fair, just, reasonable, equitable, and in the best interest of the Parties.

Accordingly, the Court ORDERS that:

1. The Petition seeking approval of the Settlement is GRANTED, and, therefore, the proposed settlement, which is found to be fair, reasonable, and in the best interests of the Parties, is hereby APPROVED.

2. Defendant DuPont is ORDERED to pay the total sum of seventy million dollars ($70,000,000.00) to Plaintiffs in accordance with the November 19, 2010, Memorandum of Understanding, and the prior Order of the Court dated December 23, 2010, which established two separate and distinct Qualified Settlement Funds.

Additionally, said Qualified Settlement Fund Accounts have been established at MVB Bank by Edgar Gentle at the direction of the Court.

3. Sixty-six million ($66,000,000.00) of the total seventy million ($70,000,000.00) payment shall be available to the Plaintiffs as directed by the Court, or it's designee, for the purposes of paying for remediation services and attorneys' fees and expenses for Plaintiffs' Counsel.

4. The remaining four million ($4,000,000.00) of the total seventy million ($70,000,000.00) payment shall be made available only for the medical monitoring sub-class of Plaintiffs as directed by the Court, or the Court's designee. Said sum shall not be used for any purpose other than for the sole benefit of the medical monitoring sub-class and shall be deposited in the Qualified Settlement Fund Account created solely for this amount and this purpose.[5]

5. Defendant DuPont is ORDERED to pay for the cost of a medical monitoring program on a "pay-as-you-go" basis, consistent with the February 25, 2008, "Final Order Regarding the Scope, Duration and Cost of the Medical Monitoring Plan," except as modified by the Memorandum of Understanding, for a period of thirty (30) years.

6. The Court recognizes that the issue as to the amount of attorney's fees and costs to be awarded remains to be determined. After weighing the evidence presented at the December 30, 2010, Fairness Hearing, and such filings as have been

[5] The Court recognizes that the Defendants assert that the administration of the medical monitoring program should be governed by a proposed executive committee instead of by the Court and the previously appointed Special Master/ Claims Administrator. Said argument and accompanying motions, as well as the exact use of the four million dollars, will be addressed by the Court in a later Order after the Court has had the time to review the matter.

made by the Plaintiffs' Counsel, the Court will promptly make a determination and enter an Order directing disbursement of fees and costs from the sixty-six million dollar ($66,000,000.00) Qualified Settlement Fund created, in part, for that purpose.

7. The Court further ORDERS that the Defendant DuPont pay such fees as incurred by the Guardian *ad litem*. The Court has determined that six thousand two hundred and fifty dollars ($6,250.00) is a reasonable and fair amount based on the time expended by the Guardian *ad litem* before and during the Fairness Hearing, which was stated to the Court as twenty-five (25) hours of work at a rate determined by the Court of two hundred and fifty dollars ($250.00) per hour.

8. Finally, as agreed to in the Memorandum of Understanding, DuPont is hereby ORDERED to pay the Court's costs associated with this matter, as taxed by the Clerk of this Court, in the amount of fifty-five thousand three hundred and thirteen dollars and eighty-nine cents ($55,313.89), which represents only the actual out-of-pocket expenses that have been borne by the citizens of Harrison County to date.[5]

9. It is ORDERED that this is a full and final settlement of all claims of the Plaintiff Classes in this action, that all claims of the Plaintiff Classes in this action are DISMISSED, with prejudice, against all Defendants, and that the Defendants are hereby released from any and all liability associated with this litigation, provided that the Defendants fulfill any and all obligations Ordered herein.

10. Further, the Court ORDERS that this is a Final Order pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure and constitutes a "final judgment [as]

[5] Said Taxation of Costs is Attachment B to this Order.

there is no just reason for delay and upon an express direction for the entry of judgment."

11. It is ORDERED that any and all prior judgments of liability and damages against all Defendants in this case are VACATED and shall have no collateral estoppel or *res judicata* effect against any Defendant in any pending or future claim against any of the Defendants arising from the operation or ownership of the zinc smelter that is the subject of this litigation. However, the Court notes that the judgment in favor of T.L. Diamond against DuPont, entered on February 15, 2008, which was upheld by the Supreme Court after a review of the indemnification agreement between T. L. Diamond and DuPont, shall not be vacated. Additionally, the Final Order which dismissed Defendants Nuzum Trucking and Joseph Paushel, with prejudice, on or about March 5, 2007, is not vacated. Finally, the jury's verdict found that the "other entities," including Nuzum Trucking, were not liable for negligence, public nuisance, private nuisance, trespass, and strict liability, and those findings are upheld and not vacated.

12. Further, the pending Motion for Sanctions, filed by the Plaintiffs on September 8, 2010, is "deemed moot" and thereby withdrawn, according to paragraph 8 of the Memorandum of Understanding. Although the Defendant has requested that "all pending motions" be deemed moot, upon a review of the record, the only other pending motions are not moot and are related to the administration of the settlement.

13. Without affecting the finality of this Final Judgment as to the Plaintiff Classes, the Court hereby retains exclusive jurisdiction over this action, and every aspect of the interpretation, implementation and enforcement of the Settlement, until the Settlement has been consummated and each and every act agreed to be performed by

the Parties thereto shall have been performed, and thereafter for all other purposes necessary to interpret and enforce the terms of the Settlement, the Orders of this Court, and in aid of this Court's jurisdiction and to protect and effectuate its judgments.

IT IS SO ORDERED.

Finally, the Clerk of this Court shall provide copies of this Order to the following:

David B. Thomas
James S. Arnold
Stephanie Thacker
Allen Guthrie & Thomas, PLLC
500 Lee St., East, Suite 800
P.O. Box 3394
Charleston, WV 25333-3394

Edgar Gentle, III
Gentle, Turner, & Sexton
501 Riverchase Parkway East,
Suite 100
Hoover, AL 35244
Special Master

Meredith McCarthy
901 W. Main St.
Bridgeport, WV 26330
Guardian ad litem

J. Farrest Taylor
Cochran, Cherry, Givens, Smith,
Lane & Taylor, P.C.
163 West Main St.
Dothan, AL 3630

ENTER: June 4, 2011

Thomas A. Bedell, Circuit Judge

LEGAL NOTICE

If you are a current or former property owner or resident near the former Spelter Smelter facility in Harrison County, West Virginia, changes to a Class Action may affect your rights.

Lenora Perrine, et al. v.
E.I. Dupont De Nemours and Company, et al.

Case No: 04-C-296-2

NOTICE OF CHANGES TO MEDICAL MONITORING CLASS DEFINITION

As previously noticed, the Circuit Court of Harrison County, West Virginia has certified a class action in this case against defendants E.I. Dupont De Nemours and Company, Inc., Mackenbrook Corporation, Marjiersten & Hegeler Zinc Company, Inc., and T.L. Diamond & Company, Inc. concerning the former zinc smelter facility in Spelter, Harrison County, West Virginia.[1] Prior notice of the class action was issued by the Court on December 21, 2006. The prior notice and other information about the class action may be viewed or downloaded at www.SpelterSmelter.com. In addition, a copy of the prior notice and other information about the class action may be obtained by contacting the Class Administrator at:

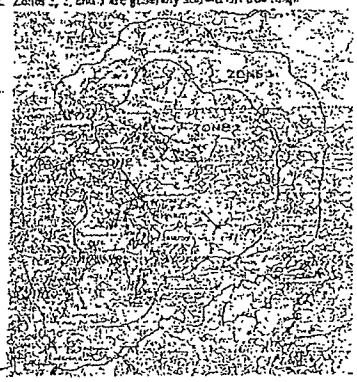
Class Administrator, Analytics, Inc.
P.O. Box 3002
Chanhassen, MN 55317-3002
1-866-233-0124

The Property Class definition[2] and the class boundaries (generally shown on the below map) set forth in the prior notice of the class action remain unchanged.

However, the Medical Monitoring Class definition has been changed as follows:

Previously the Medical Monitoring Class definition was based on total residency time within the class area of 277 days. However, this definition has been changed to require one-fourth, or four years of total residency time since 1966, depending on where one lives or lived within the class area. Total residency time of one year since 1966 is required for Zone 1. Total residency time of three years since 1966 is required for Zone 2. Total residency time of five years since 1966 is required for Zone 3. Residency time within a zone or zones closer to the former smelter facility but not meeting the total residency time for a closer zone is accumulated with any residency time within a zone or zones further away in determining total residency time.

Zone 1 is the zone closest to the former smelter facility, and Zones 2 and 3 are further away from the former smelter facility but still within the class area. Zones 1, 2, and 3 are generally shown on this map.



If you have questions as to whether a particular parcel lies within Zone 1, 2, or 3, please contact the Class Administrator.

If you previously were in the Medical Monitoring Class based on total residency time of 277 days within the class area but do not have sufficient residency time under the amended Medical Monitoring Class definition stated above, you are no longer in the Medical Monitoring Class and are no longer represented by Class Counsel. You will need to take whatever action you deem appropriate to protect your rights, if any, which will no longer be protected in this class action and which will be subject to limitations on the timely bringing of claims.

If you meet the Property Class definition and did not previously "opt out" of the class action by filing a timely exclusion form as provided under the prior notice, you remain in the class action for purposes of the Property Class even if you do not meet the amended Medical Monitoring Class definition stated above. However, if you now wish to opt out of the class action entirely because you will no longer be part of the Medical Monitoring Class, you have until August 6, 2007 to submit an exclusion form. Otherwise, you will remain within the Property Class even if this means you will no longer be part of the Medical Monitoring Class under the amended Medical Monitoring class definition.

If you are a member of the Property Class and/or the amended Medical Monitoring Class and wish to remain in the class action, you do not need to take any action. If you are a member of the Property Class and/or the amended Medical Monitoring Class and do not request exclusion from the class action, you will be bound by any judgement whether favorable or not, or any settlement in this case.

To the extent the class action claims seek monetary damages, including punitive damages, they only relate to the Property Class. To the extent the class action claims seek medical monitoring, they relate to eligible past and present residents, whether or not they are in the Property Class. If money is awarded to the Property Class, Property Class members may be entitled to a share of that money. If remediation costs and/or medical monitoring are awarded, common funds may be established to efficiently manage remediation and/or medical monitoring on behalf of multiple class members. The precise monetary, remediation and/or medical monitoring remedies and distribution, if any, are to be determined in the class action proceedings. Litigation costs and legal fees for plaintiffs' attorneys may be deducted from awards to class members. The class action does not seek damages for personal injuries, and class members may still be barred from pursuing any such potential claims in the future if they do not opt out of the class action.

If you are in the Property Class and/or the amended Medical Monitoring Class but do not want to be a part of this class action, you have the option of excluding yourself from the class action. Your written request to be excluded from the class action must be mailed to the Class Administrator and must include (1) your full name, and (2) your current mailing address. You also must sign the request and clearly state your intention to be removed from the class action. If your request is postmarked after August 6, 2007 you automatically will be included in the class action. A copy of the Exclusion Form is found below and may also be obtained at www.SpelterSmelter.com or by contacting the Class Administrator.

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR THE JUDGE, AND PLEASE DIRECT ANY QUESTIONS TO THE CLASS ADMINISTRATOR.

By order of the Honorable Thomas A. Bedell, Circuit Court Judge, Circuit Court of Harrison County, West Virginia. Date: _____, 2007.

[1] Plaintiffs allege that hazardous substances from the former Spelter Smelter facility have been released into homes and property in the class area and that these substances pose health risks. Plaintiffs allege that these released hazardous substances include arsenic, cadmium, and lead. Specifically, plaintiffs allege that, as a result of these substances, they are entitled to property damages, including remediation costs, and medical monitoring. Plaintiffs also seek punitive damages, litigation costs and legal fees for their attorneys. Defendants oppose the claims that plaintiffs are entitled to any damages, medical monitoring or other relief. Defendants dispute that hazardous substances from the Spelter Smelter facility have created the risks claimed in the class area and that the health of class members is at risk. Defendants also raise various affirmative defenses.

[2] The Property Class is comprised of those who currently own, or who as of December 1, 2003 have owned, title to real property lying within the class area, excluding those who owned property only before December 1, 2003 or only after September 14, 2006 (the date of entry of the Order Granting Class Certification).

[3] Also, the class definitions continue to exclude defendants in the case, any entity in which a defendant in the case has a controlling interest, or is a current employee, officer, director, legal representative, heir, successor, assign, or spouse of a defendant in the case.

REQUEST FOR EXCLUSION: MUST MAIL BY AUGUST 6, 2007

In the Circuit Court of Harrison County, West Virginia. *Lenora Perrine, et al. v. E.I. Dupont De Nemours and Company, et al.*, Case No. 04-C-296-2

(Print or Type)

Full Name: _____
First Middle Last

Current Mailing Address: _____
City State Zip (if known)

Telephone Number (optional): _____

Mail to:
Class Administrator, Analytics, Inc.
P.O. Box 3002
Chanhassen, MN 55317-3002

I do not wish to be a Member of the Class Action.
I have read the Notice Of Changes To Medical Monitoring Class Definition in the above-referenced case.

_____ Signature

_____ Date

Number: 0006014 * A S S E S S M E N T * January 03, 20

Assessed to. E. I. DUPONE DE NRMOURS & CO. $55,313.

The exact sum of Fifty Five Thousand Three Hundred Thirteen Dollars and 69 Cents

Victim..... LENORA PERRINE ET. AL

Assess Due Retrib C

Case #: 04-C-296

Assessment conducted at :

HARRISON COUNTY COURTHOUSE
CLARKSBURG, WV 26301

DONALD L. KOPP II, CLERK

Deputy

Distribution to Accounts...

3001 OTHER PARTIES	405.00	4013 PARENT ED-MEDIATION	25835.3
2002 COURT REPORTER	570.00	1004 SHERIFF'S FEES	1.0
4014 DOMESTIC VIOLENCE-LE	25835.36	1003 POSTAGE/COPIES	2667.1

Clerk of the Circuit Court
Harrison County

Donald L. Kopp II, Clerk

301 WEST MAIN STREET
CLARKSBURG, WEST VIRGINIA 26301

Telephone (304) 624-8525
Fax (304) 624-8710

Karen S. Nester
Chief Deputy

Lenora Perrine Et. Al

Gary W. Rich

04-C-296-2

E.I. DuPont D E Nrmours & Co.

David Thomas

Taxation of Cost

5/7/2007	Postage to Mail 1,500 Questionnaires (.42)	$630.00
	Return Postage (.42)	$630.00
7/11/2007	Jurors paid for Orientation	$22,476.69
9/10/2007	Jurors seated & 2nd Orientation	$12,748.79
	Jury 9/24 - 10/5/07	$5,197.00
	Jury 10/8/07 - 10/19/07	$5,197.00
9/12/2007	Jurors	$6,051.29
	Sub Total	$52,930.77
10/15/2010	Questionnaires Mail 1481	$656.04
	(.44) Return Postage 1259	$553.96
	Letter to Jurors 448	$197.12
	Sub Total	$1,407.12
	Court Reporter	$570.00
	Filing Fee	$145.00
	Jury Costs to SHC	$1.00
	Docket Fee	$10.00
	For Service	$250.00
	Sub Total	$976.00
	Grand Total	$55,313.89

Cost to be paid by Defendants

ATTACHMENT 3

IN THE CIRCUIT COURT OF
HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE and other individuals residing in West Virginia, on behalf of herself and all others similarly situated,

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,

Defendant.

Stipulation of Parties and Settlement Administrator

The Class Plaintiffs and the Defendant by their respective counsel, having previously entered into a settlement of the contested claims in this litigation pursuant to an executed Memorandum of Understanding dated November 19,2010, and having done so with the assistance and mediation of Edgar Gentle III, designated "Settlement Administrator" by the Court, now wish to enter into a stipulation for the purpose of setting forth the clear and unambiguous meaning of certain portions of the aforesaid Memorandum of Understanding with the specific intent that the parties hereto shall be bound by this stipulation as the parties move forward with the institution of the thirty (30) year medical monitoring program as contemplated by the Memorandum of Understanding. By affixing their respective signatures hereto counsel for the plaintiffs, counsel for the defendant, and the Settlement Administrator all acknowledge the clear meaning of the aforesaid Memorandum of Understanding in pertinent part is as set forth below, and further acknowledge that this stipulation shall guide and control the administration of

the medical monitoring program as required by the Memorandum of Understanding. It is hereby agreed then as follows:

1. In having agreed to pay the sum of $70,000,000.00 as part of the settlement of this matter, defendant DuPont as part of said payment has paid in full for any and all start-up costs and expenses necessary for the medical monitoring program to become up and running, and DuPont will not be billed for or responsible for any associated costs or expenses until the testing actually commences. At such time as the testing commences, DuPont will begin to pay for the medical monitoring program, including administration and testing expenses, consistent with the previous Orders of this Court. All such start-up costs and expenses for medical monitoring shall be paid from this total $70,000,000.00 as further directed by this Court.
2. There shall be no requirement that a medical monitoring class member register for or avail themselves of the medical monitoring program or service in order to receive a cash payment from the medical monitoring fund, provided that class membership is proven.

By their respective signatures below the Parties by and through their respective counsel together with the Settlement Administrator so stipulate this 10th day of January, 2011.

On Behalf of the Plaintiffs:

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

On Behalf of the Defendant:

James B. Lees
Hunt & Lees L.C.
PO Box 2306
Charleston, WV 25329

Agreed to by Settlement Administrator:

Edgar C. Gentle, III Esquire
Gentle, Pickens & Turner
Suite 1200, Two North Twentieth Building
2 North 20th Street
Birmingham, AL 35203

ATTACHMENT 4

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,

See page 10-11

Plaintiffs,

v.

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

E.I. DU PONT DE NEMOURS AND COMPANY, et al.,

Defendants.

FINAL ORDER SETTING FORTH THE SCOPE AND OPERATION OF THE MEDICAL MONITORING PLAN

Presently pending before the Court is the "Special Master's Report No. 1 (Medical Monitoring), Recommendations, Requests for Comments, and Prayer for Relief from the Court," which was prepared at the Order of the Court and filed on or about June 23, 2008. Additionally, the Special Master filed a Supplement to Report No. 1 on or about October 25, 2010. Both the Report and the Supplement outline proposed actions for the Court to take while directing the administration of the medical monitoring program. The Report contemplated the original plan as outlined in the verdict. The Supplement slightly modified the Report to accommodate the judgment granted by this Court to the minors and incompetents in the medical monitoring class. Additionally, the Court previously entered the "Final Order Regarding the Scope, Duration, and Cost of the Medical Monitoring Plan," on February 25, 2008, although certain aspects of that Order have changed in conjunction with the Settlement, as noted in this Order and the Final Order Approving Settlement entered on January 4, 2011.

In relation to the medical monitoring program and the settlement of this case, the Parties have filed several motions. Namely, the Plaintiffs filed the "Motion for Appointment of Claims Administrator for Property Remediation," and the "Motion to Appoint a Claims Administrator & Establish Medical Monitoring Settlement Executive Committee," on December 22, 2010. On December 27, 2010, the Defendants filed a "Motion to Establish Medical Monitoring Settlement Executive Committee." On December 28, 2010, the Defendants filed a Response to the Plaintiffs' Motion to state that the Parties are not in agreement about the function of the proposed settlement executive committees.

Finally, the Parties and the Settlement Administrator, Edgar Gentle, executed the "Stipulation of Parties and Settlement Administrator," on or about January 10, 2011, for the purpose of "acknowledg[ing] the clear meaning of the aforesaid Memorandum of Understanding." The Stipulation includes two (2) provisions, the first, generally stated, is that DuPont has fully funded the administrative start up costs for the medical monitoring program through the seventy ($70,000,000.00) million dollar settlement and will only have to provide additional administrative costs once testing commences. The second provision is that "there shall be no requirement that a medical monitoring class member register for or avail themselves of the medical monitoring program or service in order to receive a cash payment from the medical monitoring fund, provided that class membership is proven."

The Court will now address the Parties' Motions as to the Claims Administrator and proposed settlement executive committees.

Two primary observations greatly simplify the Court's decision on these Motions: first, there is no need to appoint a claims administrator for either the property class or the medical monitoring class because Edgar Gentle, of the law firm Gentle, Turner and Sexton, is the Claims Administrator for both classes as of the February 25, 2008, Order of this Court. Second, the Parties are not in dispute about the property remediation class, so its administration will proceed under the direction of Mr. Gentle, as previously Ordered by this Court.

The February 25, 2008, "Order Appointing Claims Administrator," specifically held that:

> The Court hereby engages Edgar C. Gentle, III, as the Claims Administrator and Special Master to aid the Court in carrying out the medical monitoring, property remediation, and punitive damages distribution aspects of this case. Mr. Gentle will serve as Claims Administrator and Special Master at the discretion of the Court. The Court may modify this Order at any time... Mr. Gentle's appointment is under the authority of West Virginia law[1] allowing the Court to exercise general powers and responsibilities over class actions. His actions as Claims Administrator and Special Master (and those of his agents and employees), in accordance with this Order and all future Orders of this Court, will constitute judicial actions of this Court and be protected, to the maximum extent allowable by law, by the doctrine of judicial immunity.
> Lastly, pursuant to W. Va. R. Civ. Rule 54(b), the Court directs the entry of this Order as to the claims above upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

The only aspect of the above cited Order which is no longer relevant is the distribution of money for punitive damages, as the award for punitive damages has been eliminated through the settlement, and the Court sees no reason to change the above quoted Order in any other respect.

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[1] Aluise v. Nationwide Mutual Fire Insurance, 218 W. Va. 498, 625 S.E.2d 260 (2005); State ex rel Mantz v. Zakaib, 216 W. Va. 656, 609 S.E.2d 870 (2004).

Therefore, although the Court has the power to revisit its previous Orders as necessary, both of the Plaintiffs' Motions are DENIED as MOOT, because Mr. Gentle is the Claims Administrator for both classes pursuant to Order of the Court dated February 25, 2008.[2]

Next, the Court has considered the Defendants' arguments in the "Motion to Establish Medical Monitoring Settlement Executive Committee" and compared the function of said committee against the recommended plan in the Report and Supplement to the Report. Further, the Court has reviewed the November 19, 2010, Memorandum of Understanding, which outlines several agreed provisions of the medical monitoring plan, and the Stipulation of January 10, 2011. The Defendants now request, in contradiction to the Memorandum of Understanding and prior February 25, 2008, "Order Appointing Claims Administrator," that the ultimate administrative authority for running the medical monitoring plan should rest with a three person panel serving two year terms, with the authority to hire or fire the actual administrator of the plan and the authority to act as an intermediate appeal board for issues regarding exclusion or inclusion of potential class members. The Defendants assert that the power to administer the plan should not be vested in one individual due to the thirty (30) year length of the plan and that control of the plan needs to be "institutional."

The Court understands and appreciates the Defendant's concern with the course of the plan over the next thirty years, but the proposed settlement executive committee is unnecessary. First, the Court notes that Mr. Gentle and his firm have the prior

[2] However, the Parties should note, as further outlined in this Order, the Finance Committee as established by the Court will have many of the responsibilities that the Parties have requested for the proposed settlement executive committees.

experience and expertise[3] needed to administer this plan, while the members of the proposed committee are unknown and likely would not have the same experience. Second, Mr. Gentle has been involved with this case for more than two (2) years and is ready to begin to administer the plan, while it would take time to form a committee, whose members would need even more time to understand the massive undertaking presented by this case. Third, a committee is unnecessarily expensive because Mr. Gentle can administer the plan with the oversight of the Court as a safeguard. Fourth, the creation of unnecessary committees is better suited to the legislative and executive branches of government. Fifth, the Court alone is the institutional oversight that the Defendants seek; namely, should Mr. Gentle retire, pass away, or commit some malfeasance, the Court will replace him. The Circuit Court has been serving the Citizens of Harrison County since 1863 and, from all indications, will continue to do so for the next thirty (30) years while the medical monitoring plan is implemented.

Mr. Gentle has not been appointed for life, but instead serves under the supervision and direction of the Court. Mr. Gentle, as Special Master and Claims Administrator, answers to the Court, and the Court serves the Citizens of this County and the State of West Virginia. Should the administration of the plan fail to satisfy any

[3] The Court notes that Mr. Gentle has administered large class action settlements for approximately twenty years. Specifically, Mr. Gentle has served as a Special Master for the MDL 926 Court in the Baxter, Bristol, and 3M Breast Implant Settlement since 1992 which has involved more than 1.1 billion dollars, worldwide claimants, and over two hundred thousand (200,000) checks issued to claimants. Additionally, Mr. Gentle has been in charge of more than 1 billion dollars in investments for the Dow Corning breast implant settlement. Next, Mr. Gentle has administered the settlement of a class action over PCB contamination involving more than 18,000 claimants, a fund of approximately 300 million dollars, and the defendants Solutia, Inc., Monsanto Co., and Pharmacia Corporation. Said administration has resulted in more than seventy thousand checks being issued to claimants. *See* Gentle, Edgar C., III, "Administration of the 2003 Tolbert PCB Settlement in Anniston, Alabama: An Attempted Collaborative and Holistic Remedy," 60 Ala. L. Rev. 1249 (2009). Finally, Mr. Gentle is a Rhodes Scholar, and along with his law partner Terry Turner, drafted a complete and revised Constitution for the State of Alabama from 2000 to 2001.

of the Parties, they may petition the Court to change the administrator of the plan, and as outlined in the settlement, this Court retains jurisdiction over this case, and the Court's decisions are always subject to review by the Supreme Court.

The Court finds that it is critical that the Administrator be answerable to the Court and not subject to influential pressure from one side or the other or subject to deal making by the Parties. To create an executive committee with such vast authority as proposed by the Defendants would be an impermissible delegation of the Court's authority and responsibilities to the Parties. To do so would be tantamount to the inmates running the asylum.

For the foregoing reasons, the Court hereby DENIES the Defendants' "Motion to Establish Medical Monitoring Settlement Executive Committee."

Next, the Court ORDERS the following as to the establishment of the medical monitoring plan:

a. There shall be an initial enrollment period of six (6) months, beginning no later than April 15, 2011, whereby the Claims Administrator, Edgar Gentle, will set up a system for any Plaintiff who is a member of the medical monitoring class to enroll in the medical monitoring program to avail themselves of the future monitoring benefits of the program. During this six (6) month enrollment period, any qualified Member of the Plaintiff Medical Monitoring Class may enroll in the medical monitoring program. No class member shall be entitled to participate in said program unless he or she has enrolled during the initial six (6) month enrollment period. However, if a purported class member submits an application to enroll

during the six (6) month period and such enrollment is disputed or unclear and a final determination as to the eligibility of the class member is made outside of the six (6) month period, said enrollment shall be retroactive to the application date, assuming that the individual is eligible, and the individual shall have timely enrolled in the Class. As long as the Class Member has continuously lived in the Class Area prior to reaching the minimum residence threshold, a Class Member's number of years of residence in each respective Class Area will be accumulated to determine if the threshold has been met. For example, if a Class Member lived ½ year in Zone 1 and 1 ½ years in Zone 2, he or she would qualify for medical monitoring, having fulfilled 50% of the residency required in each zone.

b. A Finance Committee, comprised of three individuals, including one representative from class counsel, one from Dupont, and the Claims Administrator, Edgar Gentle, shall be created for purposes of advising the Court on the structure and execution of the medical monitoring program. Class Counsel and DuPont shall inform the Court of their respective choices for representatives on the Finance Committee within five (5) days of the entry of this Order.

c. The Finance Committee shall exist for the purpose of providing guidance and advice for the operation of the medical monitoring program. In the event any decision is made by the Claims Administrator with respect to the payment for services or costs in the medical monitoring program to which

either Party takes exception, then either Party shall have the right to bring such objection or exception to the Court and, if necessary, may appeal the determination of the Court within the West Virginia judicial system.

d. The Finance Committee will provide guidance and, hopefully, will operate in a collaborative fashion to provide an effective and efficient medical monitoring program. In the event that the Finance Committee cannot reach an agreement on how to proceed on any issue before it, final decision making authority shall rest with the Claims Administrator, Edgar Gentle, with such decision(s) reviewable by the Court.

e. The Parties reserve the right to reasonably challenge the enrollment of any class member in the medical monitoring program. With respect to any challenge relevant to the issue of eligibility for enrollment, the challenger shall pay reasonable costs and attorney fees if the challenge is unsuccessful. The Court will hear any disputes as to the inclusion or exclusion of a potential class member.

f. On an annual basis the Court, upon recommendation of the Finance Committee, shall direct DuPont to pay a sum certain that will be set aside for each such calendar year to reasonably secure such expenditures as are reasonably necessary to execute the Medical Monitoring Program, in advance, for such following calendar year. In each subsequent year after the first, DuPont shall be credited with any amounts remaining from the prior year in determining the amount of payment for the subsequent year. Additionally, should there be a monetary shortfall during a calendar year

due to reasonable expenditures exceeding the budget; the Class Administrator shall petition DuPont for such reasonable and necessary monies as to remedy the shortfall. DuPont shall provide such monies within twenty (20) business days of receipt of the Petition.

g. The program shall be implemented consistent the Court's Order of February 25, 2008, and as modified by the Final Order Approving Settlement and this Order. The program shall provide those examinations and tests set forth in the Court's Order of February 25, 2008, with the exception that the duration of the program shall be thirty (30) years in length, and that no routine CT scans shall be performed. CT scans will only be performed as part of the medical monitoring program when a competent physician determines that a CT scan is diagnostically medically necessary as relevant to the possible exposure to heavy metal contamination. Any disputes and/or objections to the necessity of providing a CT scan in a given situation shall be decided by the Claims Administrator with such decision reviewable by this Court.

h. Additionally, after the initial six (6) month sign-up period has concluded and the number of participating Plaintiffs, be they adults or minors, is known, Defendant DuPont, in the ordinary course of its business, shall set aside reasonable reserves as required by applicable law which shall cover the estimated cost of the entire thirty (30) year medical monitoring program.

i. In regards to the four (4) million dollar ($4,000,000.00) fund specifically ear-marked for cash payments to the medical monitoring class by the Memorandum of Understanding, the Court makes the following Orders:

i. The four (4) million dollar ($4,000,000.00) fund is specifically for the sole benefit of the medical monitoring class and shall provide cash payments to the same, in a form and fashion to be determined by the Finance Committee and Claims Administrator and approved by the Court.

ii. There shall be two separate lists of medical monitoring claimants: the first shall be for only cash payments, and the second shall be for medical monitoring. Class members may sign up for either or both lists.

iii. There shall be no requirement that a medical monitoring class member register for or avail themselves of the medical monitoring program or service in order to receive a cash payment from the medical monitoring fund, provided that class membership is proven.

j. The money to fund the administrative start-up expenses of the medical monitoring program, including providing notice to potential class members, shall come from the four million dollar ($4,000,000.00) Qualified Settlement Fund. The Court finds that the most equitable solution to funding the start up costs of the medical monitoring program is to have only those individuals who are members of the medical

monitoring class shoulder the burden. Distribution of start up expenses from the sixty-six million dollar fund would negatively impact those property class members who do not participate, or are not eligible to participate, in the medical monitoring program.

k. DuPont, by paying the sum of seventy million dollars ($70,000,000.00) as part of the settlement of this matter, has paid in full for any and all start up costs and expenses necessary for the medical monitoring program, and DuPont will not be billed for or responsible for any associated costs or expenses until the testing commences. At that time, consistent with the yearly budget procedure outlined above, DuPont shall fund the medical monitoring program, including administrative costs, on an annual basis. Finally, the Claims Administrator shall attempt to combine administrative expenses between the property and medical monitoring classes to be as cost effective as possible. For such costs that are equally attributable to either class, the Claims Administrator shall establish an equitable ratio to split the costs between the property and medical monitoring classes.

l. Any and all decisions of the Claims Administrator shall be reviewable by this Court, and each Settling Party shall have the right to pursue any and all appeals of this Court's final orders and decisions to the extent such is permissible under West Virginia law.

To accomplish the above stated guidelines, the Claims Administrator, Edgar Gentle, is hereby ORDERED to accomplish the following:

1. Within ten (10) days after the entry of this Order, the Claims Administrator should submit to the Parties and the Court the proposed Class Member Medical Monitoring registration forms and the recommended criteria for proof of Class Member Medical Monitoring eligibility. To the extent practicable, objective and easily obtained proof of residency in the Class Area for the period necessary to be eligible for Medical Monitoring will be utilized, with source documents such as Class Area voter registration rolls, Class Area ad valorem property tax records, Class Area Medical Clinic patient rolls, and Class Area utility billing records. For children, source documents will include Class Area school registration rolls and Class Area Medical Clinic patient rolls. To the extent possible, such source documents will be kept confidential.

2. Additionally, within ten (10) days after the entry of this Order, the Claims Administrator shall submit a timeline of reasonable goals and dates to accomplish the directives of the Court and any other administrative details that may be necessary to the Parties and the Court, including starting class sign ups on or before April 15, 2011.

3. The putative Class Members shall be given appropriate notice of and information concerning the Medical Monitoring Program's terms. Notice measures shall include a notice mail-out to those putative Class Members which have been identified, and publication of notice in local or prominent West Virginia newspapers. To facilitate notice to putative Class Members living outside the Class Area, the registering Class Members will be asked to complete a questionnaire providing the names and address of relatives and acquaintances known to live or to have previously lived in the Class Area, followed by a notice mail-out to these additional putative Class Members. No additional

funding beyond the seventy million dollar settlement funds shall be required from DuPont to accomplish these preliminary notices.

4. In order to organize and coordinate the medical monitoring program inside and outside of the Class Area, which will involve the completion of detailed health questionnaires, direct physical examinations, and collection of lab samples for analysis, the Claims Administrator shall create a computer-based data gathering system, with data for all Class Members to be entered into the same database wherever the participating medical provider and Class Member are located. Subject to the terms of a Protective Order, which shall be considered by the Finance Committee and the Claims Administrator and recommended to the Court, and after signing a Confidentiality Agreement, which shall likewise be considered by the Finance Committee and the Claims Administrator and recommended to the Court, the Claims Administrator shall have real time access to the database, and DuPont and Class Counsel shall have access to the database with claimant-specific information redacted and unique identifiers, such as a numbering system, used instead of names.

5. Next, the Claims Administrator shall initiate a bidding process through a Third Party Administrator of health plans who shall be engaged to facilitate identification of a national laboratory or other such vendor to provide out-of-Class Area medical monitoring and in-Class Area medical providers, located in or near the Class Area, to provide medical monitoring in the Class Area, while assuring testing and access to care per the Medical Monitoring Order of February 25, 2008, at page 10. The Third Party Administrator of health plans using the CPT Codes contained in Appendix A to Dr. Werntz's March 30, 2007 Proposed Medical Monitoring, shall negotiate prices charged

by in-Class Area and out-of-Class Area medical providers, subject to review by the Parties through the Finance Committee and approval by the Claims Administrator and, ultimately, the Court. In the medical monitoring registration process, Class Members living both inside and outside the Class Area will be asked which medical providers they prefer to conduct the testing, which will be a material factor in selecting the providers utilized for medical monitoring along with the lowest cost per unit of testing.

6. The Court has determined that there shall be a Medical Advisory Panel to facilitate the Claims Administrator's quality control audits of the medical monitoring program, and to advise the Claims Administrator and the Court, with input from the Parties, on periodically updating medical monitoring protocols based on scientific and medical developments following the first five years of medical monitoring, as contemplated on page 15, decretal paragraph 1 of the Medical Monitoring Order of February 25, 2008. The Parties, via the Finance Committee, shall have input concerning the appropriate make up of the Medical Advisory Panel, its membership and its specific duties for the Court's review.

7. Next, the Court Orders that the Claims Administrator, Edgar Gentle, establish a Claimants' Advisory Committee, to consist of class members willing and able to provide input as to the administration of the medical monitoring plan. Said Committee shall only have an advisory capacity. The Committee will exist in order to ensure that Class Members are heard in the design and implementation of the Medical Monitoring Program, and other aspects of the Claim Administrator's duties. The Claimants' Advisory Committee shall be established as soon after the Effective Date as practicable, with 5 members to be residents of the Class Area and 4 to be non-residents of the

Class Area. It is requested that Claimants Advisory Committee nominations be provided by Class Counsel within 15 days after the Effective Date. In nominating potential Committee members, Class Counsel should provide adequate facts to facilitate the Court's determination of each candidate. To the extent practicable, Committee members will be incumbent Class Representatives, and the Parties, via their role on the Finance Committee, will be invited to provide input on the proposed Committee members prior to their selection. The Committee will have an initial organizational meeting with the Court, the Claims Administrator, and the Finance Committee in person, conduct periodic telephonic meetings, and have one annual meeting with the Court, the Claims Administrator and the Parties in person thereafter.

8. In order for the Claims Administrator, in collaboration with the Finance Committee, to prepare the initial budget and administrative actions for the Medical Monitoring Program for review and approval by the Court, the logistics for this aspect of the case should be finalized as soon as practicable. The Claims Administrator shall attempt to find usable office space for lease in the Class Area in or near Spelter and utilize the same office space for both the property and medical monitoring classes.

9. To facilitate efficient utilization of the class funds and to minimize administrative expenses, the Claims Administrator shall look into obtaining living quarters in the Class Area for the first two (2) years of medical monitoring, during which time the Claims Administrator's staff will have an ongoing presence. Such a residence will be more cost effective than a hotel, and create less of a burden on the classes. Additionally, the Claims Administrator shall look into the cost effectiveness of obtaining a vehicle to reduce rental car bills. Said living quarters and/ or administrative vehicle

shall be discussed by the Finance Committee and recommended by the Claims Administrator to the Court for final approval.

The Court, as noted in the Final Order Approving Settlement, shall retain continuing jurisdiction and the ultimate authority over the administration of this settlement.

Next, because the administration of the property remediation settlement has not yet been brought before the Court, the Claims Administrator is directed to prepare a proposed time line and punch list for the same and submit it to the Parties and the Court within twenty (20) business days of the entry of this Order.

The Court intends to retain the services of the Guardian *ad litem*, Meredith McCarthy, for the purposes of providing legal representation to the minors and incompetents in the classes, assuming that she is still ready and willing to serve. The details and necessary duties of the Guardian *ad litem* can be determined as a need for such services becomes apparent. The Court directs the Finance Committee and the Claims Administrator to orchestrate such necessary services for the classes and provide direction to Mrs. McCarthy. The Guardian *ad litem* shall serve at the previously established rate, or such additional just rate of compensation to be determined by the Finance Committee and the Claims Administrator and paid along with the administrative and start up costs for each of the classes.

Lastly, pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, the Court directs entry of this Order as a Final Order as to the claims and issues above upon an express determination that there is no just reason for delay and upon an express direction for the entry for judgment.

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
James S. Arnold
Stephanie Thacker
Allen Guthrie & Thomas, PLLC
500 Lee St., East, Suite 800
P.O. Box 3394
Charleston, WV 25333-3394

Meredith McCarthy
901 W. Main St.
Bridgeport, WV 26330
Guardian ad litem

Edgar Gentle, III
Gentle, Turner, & Sexton
501 Riverchase Parkway East,
Suite 100
Hoover, AL 35244
Special Master

J. Farrest Taylor
Cochran, Cherry, Givens, Smith,
Lane & Taylor, P.C.
163 West Main St.
Dothan, AL 36301.

ENTER: January 18, 2011

Thomas A. Bedell, Circuit Judge

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. DU PONT DE NEMOURS AND COMPANY, et al.,

Defendants.

FINAL ORDER APPROVING THE TRANSFER OF THE REMAINING ASSETS OF THE PRE-IMPLEMENTATION DATE FUNDING OF THE PERRINE MEDICAL MONITORING QUALIFIED SETTLEMENT FUND TO THE POST-IMPLEMENTATION DATE FUNDING OF THE PERRINE MEDICAL MONITORING QUALIFIED SETTLEMENT FUND AND CLOSING THE ACCOUNTS OF THE PRE-IMPLEMENTATION DATE FUNDING

Presently pending before the Court is the Claims Administrator's Report Requesting Court Approval of Transferring Remaining Assets of the Pre-implementation Date Funding of the Perrrine Medical Monitoring Qualified Settlement Fund to the Post-Implementation Date Funding and Thereby Close the Accounts of the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund (the "Report") submitted to the Court on September 23, 2014.

The Court hereby finds that the purpose and goals of the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund have been fulfilled, and that the remaining hard assets (half of the car, some equipment and Claims Office furnishings, with the other half being owned by the Perrine DuPont Remediation Qualified Settlement Fund) and monetary assets in the Pre-Implementation Date Funding of the

Perrine Medical Monitoring Qualified Settlement Fund be transferred into the Post-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund. The remaining monetary assets in the Pre-Implementation Date Funding total approximately $26,000, which is too small of an amount to provide an additional cash dividend to medical monitoring claimants, of which there are approximately 6,100.

Therefore, the Court **ORDERS** that, on or before September 30, 2014, the remaining assets of the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund be transferred to the Post-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund where the purpose of benefitting the medical monitoring class will continue to be met.

The Court further **ORDERS** that the accounts of the Pre-Implementation Date Funding of the Perrine Medical Monitoring Qualified Settlement Fund thereby be closed, effective on or before September 30, 2014, and finds that the Claims Administrator and his staff have successfully fulfilled the mission of the Pre-Implementation Date Funding and are granted judicial immunity in accordance with West Virginia Law with regard to the subject of Pre-Implementation Date Funding.

After a careful review of the Report, and in consideration of the applicable law, the Court **ORDERS** that the same is hereby **APPROVED** and shall be used in the administration of the Settlement.

Lastly, pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, the Court directs entry of this Order as a Final Order as to the claims and issues above upon an

express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

IT IS SO ORDERED.

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
300 Summers Street, Suite 1380
P.O. Box 3824
Charleston, WV 25338-3824
DuPont's Finance Committee Representative

Virginia Buchanan, Esq.
Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.
P.O. Box 12308
Pensacola, FL 32591
Plaintiffs' Finance Committee Representative

Edgar C. Gentle, III, Esq.
Gentle, Turner, Sexton, Debrosse & Harbison
55 B Street
P.O. Box 257
Spelter, WV 26438
Special Master and Claims Administrator

Meredith McCarthy, Esq.
Guardian Ad Litem for Children
901 W. Main St.
Bridgeport, WV 26330

Order Prepared By:

Edgar C. Gentle, III, Claims Administrator
Gentle Turner, Sexton, Debrosse & Harbison
P.O. Box 257
Spelter, WV 26438

Michael A. Jacks, Esq.
W. Va. Bar No. 11044
Gentle Turner, Sexton, Debrosse & Harbison
P.O. Box 257
Spelter, WV 26438

ENTER:_____

Thomas A. Bedell, Circuit Judge