

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.

**Class Counsel's Response to DuPont's Submission in Connection with
Proposed CT Guidelines and Preliminary Medical Monitoring Budget**

Class counsel files this response to DuPont's position regarding the proposed CT guidelines. DuPont supports the guidelines that were proposed by the Claims Administrator. Class counsel disagrees with these guidelines to the extent that they require the presence of symptoms before a physician may order a CT scan.

I. The proposed CT guidelines usurp the discretion of the physician.

*"The Defendant does agree to provide CT scans that are diagnostically medically necessary as determined by a competent physician as relevant to possible heavy metal contamination at issue in this litigation."*¹ In a departure from this clear and unambiguous language of the MOU, the proposed CT rule places the Claims Administrator in the shoes of the physician by dictating when a CT scan is diagnostically medically necessary. The difference in

¹ Settlement MOU, ¶ 3.c.

the interpretation of “diagnostically medically necessary” between the Claims Administrator and Drs. Wertz and McGuire demonstrates why the use of CT scans should be left solely in the hands of the physician. The proposed CT rule is at odds with Dr. Wertz’s opinion that, “I believe that diagnostically medically necessary CT scans for the participants can be estimated purely on the basis of exposure, without the need for the participant to be symptomatic.” Dr. Wertz’s opinion is supported by Dr. McGuire, who was retained by the Third Party Administrator to review medical literature and critique the Claims Administrator’s CT guidelines. Drs. Wertz and McGuire essentially agree that “diagnostically and medically necessary” means that all eligible participants should be offered at least a baseline CT scan because they are in a high risk population due to their exposure to heavy metals. Following the baseline CT scan, the need for future CT scans should be left solely up to the physician based upon the physician’s sound discretion.

In addition to being a clear departure from the MOU, the unreasonably restrictive proposed CT rule undermines the policy of medical monitoring. As was articulately set out in the guardian ad litem’s submission, medical monitoring is used to detect diseases before they become symptomatic. Requiring the presence of symptoms defeats the purpose of medical monitoring.

II. Response to DuPont’s Key Elements Relative to CT scans and the settlement in this case

- *“CT scans are to be non-routine, having been negotiated out of the Medical Monitoring program by the Parties via the settlement,”* CT scans were not negotiated out of the Medical Monitoring program. While not provided on a predetermined frequency, CT scans are a vital part of the Medical Monitoring program to screen for lung cancer.

- *"CT scans are not to be used as a screening tool,"* To the extent that DuPont implies that CT scans cannot be given to an asymptomatic participant, Class counsel disagrees.
- *"CT scans carry inherent safety risks;"* The risks and benefits of CT scans is issue that should be discussed between the physician and the participant.
- *"Only competent physicians—not the lawyers or the Claims Administrator—may make the decision regarding the diagnostic medical necessity of CT scans"* Class counsel agrees with DuPont.
- *"Any such CT scans may only be ordered as related to alleged heavy metal contamination that was at issue in this litigation, that is, arsenic, cadmium, zinc, and lead, after a review of the Medical Monitoring blood and urine test results."* If DuPont is suggesting that a CT scan is only available after an abnormal blood or urine result, Class counsel disagrees. While a positive blood or urine result may be indicative of current exposure, lung cancer, caused by toxic exposure, however, is often a result of years of exposure and has a very long latency period. Therefore, using blood or urine tests would not necessarily be relevant to determining risks associated with long-term exposure to carcinogens and should not be used as a trigger for CT scans.

DuPont asserts that even Class counsel has recognized the inherent dangers of CT scans. DuPont, however, makes an unfair comparison between the risks associated with properly administered, low dose CT scans and the CT scans that are the subject of a posting on the website of Hill, Peterson, Carper, Bee & Deitzler, P.C.

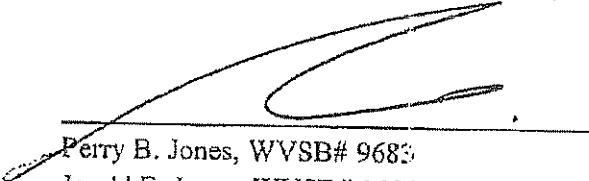
R. Edison Hill, who served as Class counsel, and his law firm are pursuing claims for patients who were injured as a result of the misuse of a CT scan machine at a particular hospital during a particular procedure known as a brain CT perfusion scan. (See Exhibit 1, Affidavit of R.

Edison Hill). As a result of this misuse, patients received eight to ten times or even more than the normal dose of radiation. In many instances, the over-radiation was so great that the patients' hair fell out. This particular example of gross misuse in the operation of a CT scan machine is irrelevant to the proper use of CT scans to screen a high risk population and is certainly not a blanket indictment against CT scans.

Conclusion

DuPont states, ". . .the decision as to whether a CT scan is diagnostically medically necessary as relevant to possible exposure to the heavy metal contaminants at issue is best left to the medical professionals." Class counsel agrees. Class counsel respectfully requests that a physician's discretion in the use of CT scans not be restricted to participants with symptoms.

Respectfully submitted this 3rd day of October, 2011.



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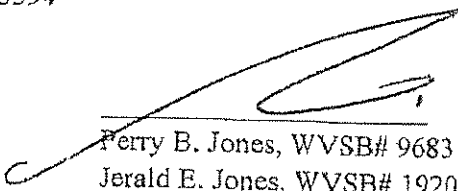
CERTIFICATE OF SERVICE

I, Perry Jones, counsel for Plaintiffs, hereby certify that service of **Class Counsel's Response to DuPont's Submission in Connection with Proposed CT Guidelines and Preliminary Medical Monitoring Budget** has been made upon counsel of record via U.S. Mail, postage prepaid, on this 3rd day of October, 2011, addressed as follows:

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Guthrie & Thomas, PLLC
500 Lee Street East, Suite 800
P.O. Box 3394
Charleston, WV 25333-3394

Meredith McCarthy, Esq.
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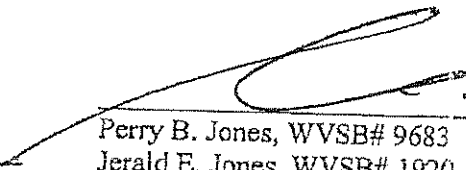
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**Exhibits to Class Counsel's Response to DuPont's Submission in Connection
with Proposed CT Guidelines and Preliminary Medical Monitoring Budget**

Exhibit 1: Affidavit of R. Edison Hill

Respectfully submitted this 3rd day of October, 2011.



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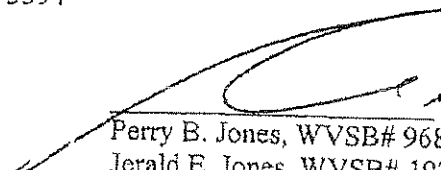
I, Perry Jones, counsel for Plaintiffs, hereby certify that service of Exhibits to Class Counsel's Response to DuPont's Submission in Connection with Proposed CT Guidelines and Preliminary Medical Monitoring Budget has been made upon counsel of record via U.S.

Mail, postage prepaid, on this 3rd day of October, 2011, addressed as follows:

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WAUNONA MESSINGER CROUSER,
REBECCA MORLOCK, ANTHONY BEEZEL,
MARY MONTGOMERY, MARY LUZADER,
TRUMAN R. DESIST, LARRY BEEZEL, and
JOSEPH BRADSHAW, individuals residing in
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Plaintiffs,

v.

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AFFIDAVIT OF ATTORNEY R. EDISON HILL

I, R. Edison Hill, am a senior partner of the law firm of HILL, PETERSON, CARPER, BEE & DEITZLER, PLLC, located in NorthGate Business Park, 500 Tracy Way, Charleston, West Virginia 25311. I am counsel of record for the Plaintiffs/Class Members in the above-referenced civil action. DuPont in its "Submission of E. I. du Pont de Nemours and Company In Connection With Preliminary CT Scan Guidelines and Preliminary Medical Monitoring Budget" has stated, in paragraph five of the said submission, that my law firm is "well aware of the potential risk of CT scans" and that my law firm is "presently advertising on their website, 'CT Scan Dangers, Patients May Have Been Injured Due To Over-Radiation.'"

DuPont has misstated and taken out of context the current litigation that my law firm is involved in regarding over-radiation from CT scans. As clearly indicated by the pertinent portions

of my law firm's website, attached hereto as Exhibit 1, my law firm litigation is exclusively limited to over-radiation from Cabell Huntington Hospital in Huntington, West Virginia, regarding "CT Brain Profusion Scans." Cabell Huntington Hospital sent notices to over 66 patients stating that their records showed that patients may have received over-radiation in these particular brain CT profusion scans. Preliminary investigation shows that Cabell Huntington Hospital patients were over-radiated eight to ten times or even more than the normal radiation as a result of one particular CT scan technician misusing the CT scan machine that resulted in so much radiation that many patients' hair fell out. Cabell Huntington Hospital concedes that excessive radiation in the amounts set forth above can cause cataracts, tumors, and cancers. When CT scanning equipment is used in accordance with the manufacturer's specifications, there should be no adverse health effects.

Cabell Huntington Hospital has admitted in writing to over-radiating over 75 of its patients. My law firm represents over 40 such patients of Cabell Huntington Hospital. The above-referenced website information has very exclusive application, and in no way should be construed by anyone, including DuPont, that my law firm agrees with DuPont regarding risks associated with proposed CT scans for Class Members in this case.

There is no similarity in the CT scan over-radiation referenced in my law firm's website as compared to the CT scans required for appropriate screening in this case to Class Members exposed to a variety of toxic chemicals for which DuPont is responsible.

FURTHER AFFIANT SAITH NAUGHT.

R. Edison Hill

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STATE OF WEST VIRGINIA,

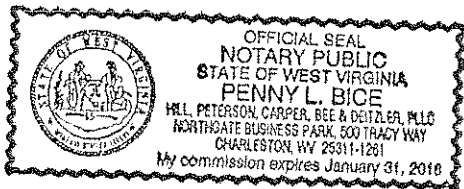
COUNTY OF KANAWHA, to wit:

Taken, subscribed, and sworn to before the undersigned authority this 23rd day of
September 2011.

My commission expires: January 31, 2016

Penny L. Bice
NOTARY PUBLIC

[SEAL]
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The Law Firm of HILL, PETERSON, CARPER & DEITZLER, PLLC

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Have you or a family member suffered symptoms such as hair loss, memory loss, headaches or confusion following a CT Scan?

Due to software malfunctions and other causes, a routine brain CT scan may have been very dangerous. Click [<Here>](#) for additional information.

We are Now Accepting Cases Involving the DePuy Orthopedics Hip Implants.

In August, 2010 DePuy Orthopedics announced they were recalling two kinds of hip implants. The failures resulted in patients needing second surgeries to replace the defective device.

We are Terminating our Involvement in Darvon/Darvocet/Propoxy-phene Litigation

Our involvement in this litigation has now been terminated. Letters to current clients are being sent out explaining our decision.

The law firm of Hill Peterson Carper Bee & Deitzler, PLLC is a skilled team of dedicated and experienced trial attorneys located in Charleston, West Virginia. If you or a loved one has been seriously or fatally injured due to the negligence or careless acts of another party, Hill, Peterson, Carper, Bee & Deitzler, PLLC is ready to serve.

Receiving expert legal counsel as soon as possible is the best way to protect your legal rights and work towards compensation that is fair to you.

Hill, Peterson, Carper, Bee & Deitzler offers a free, no obligation consultation that will help you to understand your legal rights. Please contact us at 800-822-5667. You may also ask a question by e-mail. In addition, we encourage you to review the other helpful information and articles on this site.

If you have a potential claim from you. Simply fill out a form below. One of our attorneys will contact you. There is no cost or obligation.

Name

Address

City State & Zip Code

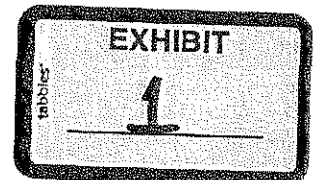
Phone Number

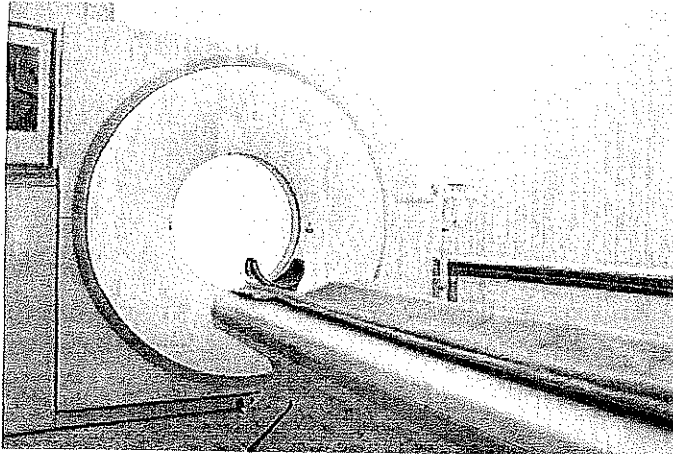
E-Mail Address

Best Time to Contact You

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Patients Have Received Significantly Elevated Levels of Radiation During Certain Brain CT Scans

*****UPDATE*****

ATTENTION: POSSIBLE CT SCAN RADIATION OVERDOSES REPORTED AT CABELL HUNTINGTON HOSPITAL IN HUNTINGTON, WEST VIRGINIA.

HPCBD IS CURRENTLY INVESTIGATING REPORTS OF PATIENTS THAT RECEIVED OVERDOSES OF RADIATION WHO RECEIVED BRAIN CT SCANS AT CABELL HUNTINGTON HOSPITAL.

SYMPTOMS OF RADIATION SICKNESS FROM RADIATION POISONING INCLUDE:

- Headache
- Nausea
- Vomiting
- Pattern Baldness (Typically a Ring Around the Head)
- Memory Loss
- Cataracts

IF YOU RECEIVED A BRAIN CT SCAN AT CABELL HUNTINGTON HOSPITAL OVER THE PAST SEVERAL YEARS, YOU MAY HAVE A CLAIM FOR MONETARY DAMAGES.

The New York Times recently reported that hundreds of patients received elevated levels of radiation during a common test known as a "CT Brain Perfusion Scan". Click [here](#) for other media coverage concerning brain CT scans.

A CT brain perfusion scan typically delivers a high dose of radiation. If the medical devices are not used or calibrated correctly, the dose can reach 2000 times that of a typical x-ray.

The Food and Drug Administration has recently been investigating the scope of the problems. Early on, investigators thought the radiation overdoses were limited to a hospital in Alabama involving hundreds of patients. Investigators now believe that thousands of patients may be victims of radiation overdose brain damage in hospitals across the country.

This investigation concerns people who received a brain perfusion scan using the scanners manufactured by GE Healthcare. Typically, these scans are ordered for stroke and trauma patients to determine the amount of blood flowing to specific parts of their brains. It has also been used in patients with cerebrovascular diseases and tumors. It is possible that patients received radiation overdoses from this equipment. Symptoms of radiation overdose are as follows:

- Headache
- Nausea
- Vomiting
- Pattern Baldness (Typically a Ring Around the Head)
- Memory Loss
- Cataracts



The radiation overdose can create long term effects such as:

- Cancer
- Dementia
- Brain Tumors
- Brain Tissue Necrosis
- Radiation Induced Encephalopathy

If you or a loved one has received a CT Brain Perfusion Scan and have experienced symptoms as described above, it is important that you contact us for a consultation with an experienced attorney who specializes in cases where defective medical devices and procedures are concerned. Our experience with Guidant and Medtronic defibrillator implant litigation and cases involving numerous drug manufacturers has given us the insight that we need to be effective litigators for consumers with defective medical devices. The experienced group of Attorneys at Hill, Peterson, Carper, Bee & Deitzler will provide you with individual attention and work for you to obtain the compensation that you deserve.

Hill, Peterson, Carper, Bee & Deitzler, PLLC

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