

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.

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

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

Defendant.

**ORDER APPROVING AND FURTHER DESIGNATING
PROPOSED SETTLEMENT ADMINISTRATION
BUDGET LINE ITEMS FOR FINANCE COMMITTEE**

Presently pending before this Court in this matter is the unresolved issue as to the appropriate payment of Plaintiffs' Finance Committee representative fees as administrative costs as proposed in the *Perrine DuPont Suggested Administration Budget No. 1 January 1, 2011 To August 31, 2011*, heretofore submitted to this Court on February 4, 2011, given said representative having also been a member of Class counsel's legal team.

By Order entitled *Final Order Approving Certain Aspects of Settlement Administration Items*, entered on February 10, 2011, the Suggested Initial Budget, with related documents, was approved "as to all items not related to

Finance Committee member reimbursement". This Court duly noted therein that, "The lone dispute between the Parties about the budget is whether Finance Committee members should be paid by the Settlement" and, upon the Parties' joint recommendation, adopted a briefing schedule "for the dispute over reimbursement of the members of the Finance Committee". This Court further noted therein that, "Following careful consideration of submitted Briefs and Replies as to Finance Committee member reimbursement" it would "...either schedule a hearing or render a decision based upon the submissions if no further information was needed to aid the Court in making its ruling." (See Order @ p. 5)

On February 14, 2011, legal counsel (as well as designated Finance Committee Representative) for Defendant filed *DuPont's Opposition To Line Items For Attorneys' Fees In Proposed Settlement Administration Budget* with attached exhibit and legal counsel (as well as designated Finance Committee Representative) for Plaintiffs submitted "*Plaintiffs' Finance Committee Representative's Brief Regarding Finance Committee Payments*" on February 14, 2011, which was later filed herein on February 18, 2011.

On February 17, 2011, said Defendant's counsel filed "*DuPont's Reply In Opposition To Plaintiffs' Finance Committee Representative's Brief Regarding Finance Committee Attorney Fee Payments*" with attached exhibits and said Plaintiff's counsel submitted "*Plaintiffs' Finance Committee Representatives' Reply To DuPont's Opposition To Line Items For Finance Committee Member Payments*" on February 17, 2011, which was later filed herein with the entry of this Order.

This Court finds nothing further need be submitted by the parties nor hearing scheduled for gathering further information.

Upon a full and diligent review of the submitted briefs and replies of the parties, careful scrutiny of pertinent documents and prior Orders herein and deliberate consideration afforded all arguments and requests of said counsel, it is this Court's conclusion that the Suggested Initial Budget line item designated as "*Finance Committee Fees*" be **APPROVED** upon a finding that such fees are legitimate administrative costs and, as such, while advising and guiding the Court solely on the structure and execution of an effective and efficient medical monitoring program. It is this Court's further conclusion that such legitimate administrative costs, are to be paid initially from the four million dollar (\$4,000,000) Qualified Settlement Fund if such advisory services are provided during the medical monitoring program's start-up phase and prior to the commencement of testing. Once testing commences, this Court concludes such legitimate administrative costs are to then be paid by Defendant DuPont consistent with the yearly budget procedure outlined in previous Orders and so funded on an annual basis.

Initial Statement

Legal counsel for both Parties and the Special Master/Claims Administrator are not so blessed with the godlike abilities of Roman mythology's Janus that they be able to foresee every potential or evolving issue in advance when presenting negotiated, pre-settlement litigation agreements or post-

settlement administration proposals to this Court for ruling, approval and oversight. This Court likewise professes no such ability to see both future and past simultaneously and is left with finding the appropriate middle ground, if any, between counsels'/representatives' contentious positions on the present issue for which a dispositive ruling is being sought. General concepts of fundamental fairness in light of the totality of circumstances will best serve this Court as a pole star in overseeing the administration of the class action settlement's implementation, programs administration and fund distribution all in light of prior agreements between the parties and rulings of this Court as addressed in all relevant Orders entered herein.

Hopefully exercising its sound judicial discretion, this Court is quite aware of respective counsels' positions as to Finance Committee representative fees and their budgetary treatment. The submitted Briefs and Replies are rather in-depth even raising additional related and non-related sub-issues that further highlight how the administration of this settlement and related programs must evolve appropriately in order to carry out the two main curative provisions; that being property remediation and medical monitoring. Here, the well-worn adage, "The devil is in the details" certainly appears applicable.

Analysis

Defendant DuPont categorically opposes the payment of Plaintiffs' Finance Committee Representative's Fees, as included in said Administrative

Budget. In support of this position, its legal counsel, also presently serving as its Finance Committee representative, relies first and foremost upon her forceful analysis and application of various document provisions and Orders herein, which specifically include:

1. Prior Orders entered on February 25, 2008; January 4, 2011; January 18, 2011; January 26, 2011; January 27, 2011.
2. Amended Petition filed on December 15, 2010.
3. Memorandum of Understanding dated November 19, 2010.

Plaintiffs' Class counsel member, now independently serving as Plaintiffs' Finance Committee Representative, asserts a creatively articulated position in favor of payments being allowed for services provided by a Plaintiffs' Finance Committee representative regardless of that representative's past, present or future relationship, if any, to the settlement class. Provisionally, such payments arguably are to be made from Settlement Funds and otherwise accounted for or charged as appropriately determined by prior Orders, approved Budgets and future rulings. This position relies upon interpretive characterizations of the evolving actual relationship between Finance Committee representatives assisting this Court in implementing both the medical monitoring and property remediation programs pursuant to broad powers delegated to the Special Master/Claims Administrator in utilizing his discretionary authority for efficient administration and to the ultimate benefit of the settlement class.

Findings and Conclusions

Accordingly, this Court, upon a rather exhaustive review and extensive deliberation, further finds, reiterates and concludes that:

(1) It's reliance upon Finance Committee representatives in providing collaborative guidance and advice is deemed appropriate and their discretionary oversight being subject to this Court's review and approval only insofar as the medical monitoring program as specifically addressed in prior Orders of this Court.

(2) This Court deems any individual serving as Finance Committee Representative to be a "designated representative", nothing more or less.

(3) All Finance Committee representative fees and related expenses incurred for services rendered as approved by this Court are deemed to be administrative costs and not legal or attorney fees.

(4) Finance Committee representative services rendered as such are deemed not to be of such nature that they can be legitimately characterized as subsequent legal services provided which attorney fees compensation has already been paid by Defendant DuPont and approved by this Court to Plaintiffs' Class legal counsel team for litigating underlying claims against, negotiating settlement thereof with, and completing execution thereof.

(5) Payment of Finance Committee Representatives fees and expenses for specific duties requested and rendered as such are deemed a distinct *animus et factus* from Class counsel teams' previous awards of attorneys fee and expenses for litigious representation that culminated in the execution of agreed

settlement terms and settlement funding from which administrative implementation is now taking wing.

(6) Given this Court's analysis, subsequent findings and conclusions, it is deemed that any "standing" issue raised, questioned or asserted as to challenging such budgetary line items has become moot

(7) As a designated representative, such person is to receive compensation for services reasonably provided to this Court at the budgeted hourly rate approved by this Court as well as reimbursement for any expenditure reasonably incurred in carrying out specifically requested duties.

(8) Such compensation and reimbursement are to be accounted from or paid as follows:

a) Any services rendered and expenses incurred by a Finance Committee representative, not otherwise compensated, during the administrative start-up of the medical monitoring program shall come from the four million dollar (\$4,000,000) Qualified Settlement Fund.

b) Any services rendered and expenses incurred by a Finance Committee representative, not otherwise compensated, after the completion of the administrative start-up and once testing begins in the medical monitoring program shall be the responsibility of and billed to Defendant DuPont as administrative costs consistent with the yearly budget procedure outline in this Court's previous Orders.

(9) No services are contemplated by any Finance Committee representative in regard to the Property Remediation Program. In the event any

services have been or are subsequently rendered or expenses incurred by Plaintiffs' Finance Committee representative serving as such as to the property remediation program, there shall be no compensation or reimbursement from either the Qualified Settlement Fund or by Defendant DuPont.

(10) It is incumbent upon the Special Master/Claims Administrator to adroitly and efficiently utilize Finance Committee Representatives' collaborative advice and guidance so as to maximize their input with as minimal amount of incurred fees and expenses as possible for the proper administration of the medical monitoring program.

Rulings

Accordingly, this Court so **ORDERS** and **APPROVES** the specific budgetary line items for Finance Committee Fees as originally contemplated and contained in the *Perrine DuPont Suggested Administration Budget No. 1 January 1, 2011, to August 31, 2011*, which was approved by a Final Order entered by this Court on February 10, 2011.

This Court further **ORDERS** that such budgetary line item proceeds shall be applied to payment for reasonable services performed and reasonable expenditures incurred by a Finance Committee representative only insofar as for services performed and reasonable expenditures incurred as they relate to the medical monitoring program.

This Court further **ORDERS** that such fees and expenses are necessary and proper administrative costs and shall be accounted from and paid by the four million dollar (\$4,000,000) Qualified Settlement Fund when so incurred during the administrative start-up of the medical monitoring program and after the completion of the administrative start-up and testing begins in the medical monitoring program such fees and expenses incurred shall be the responsibility of and billed to Defendant DuPont as administrative costs consistent with the yearly budget procedure outlined in this Court's previous Orders.

Pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, this 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.

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

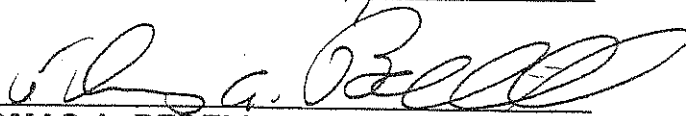
Edgar C. Gentle, III, Esq.
Settlement Claims Office
P. O. Box 257
Spelter, WV 26428
Special Master/Claims Administrator

Stephanie D. Thacker, Esq.
Allen Guthrie & Thomas, PLLC
P. O. Box 3394
Charleston, WV 25333-3394
Finance Committee Member

Virginia M. Buchanan, Esq.
Levin, Papantonio
316 S. Baylen Street
Suite 600
Pensacola, FL 32502
Finance Committee Member

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

ENTER: March 9, 2011


THOMAS A. BEDELL, Judge

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT:

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 9 day of March, 2011.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

Seal of the Court this 9 day of March, 20 11.

Donald L. Kopp II sk
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia