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IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

Plaintiffs,

v.

Case No. 04-C-296-2

Judge Thomas A. Bedell

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

Defendants.

ORDER DETERMINING THE DISTRIBUTION OF SECOND REMEDIATION SURPLUS

The Court previously entered the "Scheduling Order Respecting a Possible Health Study and the Use of Residual Remediation Funds," ("the Scheduling Order") on March 9, 2017. Pursuant to the Scheduling Order, the Court received a written submission from the Claims Administrator and the Medical Advisory Panel on April 24, 2017, followed by written submissions from the Guardian Ad Litem on May 24, 2017, DuPont on June 22, 2017, and Class Counsel on July 14, 2017.

The pending matters identified in the submissions are related to the usage of the Remediation surplus and the design of the Medical Monitoring Program.

The Court held a hearing on these and other issues on July 18, 2017, at 12:00 P.M., to allow the Court to consider these matters. The hearing was attended by Edgar C. Gentle, III, the Claims Administrator; Meredith McCarthy, as guardian *ad litem*; Jim Arnold, counsel for DuPont; Michael Jacks, as local counsel for the Claims Administrator; Settlement Staff, Christy Mullins; Medical Advisory Panel member Dr. Bruce Pitt, and the hearing was broadcast on a conference call and attorneys, Farrest Taylor, as Class Counsel; Kip Harbison, Chris Smith, and Jennifer Blankenship, for the

Claims Administrator's office; and Niall Paul and Clifford Kinney, for DuPont, participated telephonically.

The following is a summary of the record and evidence on the distribution of the Remediation surplus provided to the Court.

Settlement property remediation has been completed, and approximately \$4 million in previous Remediation surplus dividend payments were made to Class Members in December 2016. There is an additional Remediation surplus of approximately \$600,000 available for either a final dividend payment, or other uses related to the Settlement to be determined by the Court.

The Claims Administrator presented the issues, and described the fact finding process he undertook in relation to the remaining Remediation funds, which included mailing questionnaires to participating Class Members and conducting Town Hall Meetings to garner the input of Class Members. The Class Members are relatively uniform in the position that the remaining Remediation funds be used for dividend payments, although there is some disagreement as to how the shares should be distributed.

The Claims Administrator suggested that the Court has wide discretion in the use of the Remediation funds, and also argued that it was possible the funds may be used for Medical Monitoring purposes, such as funding an epidemiological or health study, or funding incentive payments to Claimants to encourage future Medical Monitoring participation by paying for Claimant travel costs and meal expenses. The Claims Administrator recommended that 50% of the Remediation surplus be distributed to the Property Class, and the balance to be paid in carrying out design modifications to the Medical Monitoring Program.

Class Counsel and the *Guardian ad litem* argued the position that both the Medical Monitoring Class and the Property Remediation Class jointly own the surplus funds under the November 19, 2010, Settlement Memorandum of Understanding, which initiated the Settlement, and that the funds can be used for a health study or incentive payments to encourage participation in the Medical Monitoring Program. They recommended that 50% of the Remediation surplus go to the Property Class, and the balance to be paid in carrying out design modifications to the Medical Monitoring Program.

DuPont argued that all the remaining surplus Remediation funds should be paid as a dividend to Property Class Members only.

After hearing from those attending the hearing and reviewing the submissions of the Parties and the Claims Administrator, the Court issues the following ruling.

The Court hereby **ORDERS** that:

- (1) The Court has the jurisdiction and discretion to determine the usage of the remaining Property Remediation surplus funds, which total approximately \$600,000.
- (2) The Court Orders, Directs, and Decrees, that the remaining Remediation surplus funds shall be distributed to Property Class Members under the same Rules previously set by the Court for the last Remediation surplus dividend payment, as established by the "Final Order Determining the Final Surplus Payment Program Calculations" entered on November 28, 2016. The Claims Administrator shall calculate and pay out the remaining Remediation surplus funds to the same claimants identified and approved by the Court for the last payment, and the Claims Administrator shall use the same rules as for the last dividend payment to determine and distribute the share payments.

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 disposition of the Remediation surplus funds and makes the express determination that there is no just reason for delay and expressly directs the entry of judgment on that issue.

The Clerk of this Court shall provide certified copies of this Order to the following:

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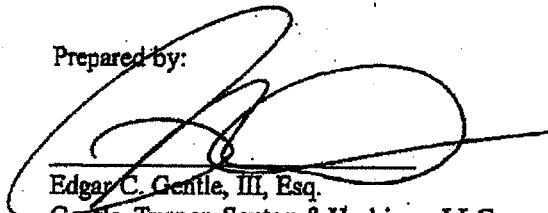
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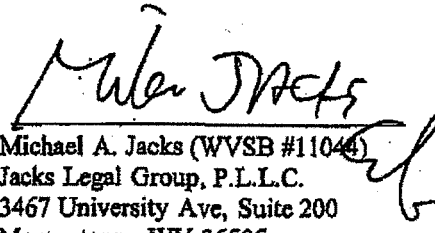
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ENTER: August 4, 2017


Thomas A. Bedell, Circuit Judge

Prepared by:


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