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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. DUPONT DE NEMOURS &
COMPANY, et al.,

Defendants.

ORDER RESOLVING MEDICAL MONITORING ROUND TWO ISSUES

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

In order to allow the Parties to be heard on these issues, the Claims Administrator submitted an initial Report to the Court on September 3, 2013, after sharing it with the Parties for input. The initial Report contained preliminary comments of DuPont, received prior to its filing. A supplemental DuPont response was submitted to the Court on September 6, 2013, and a response was also received from Meredith

McCarthy, Esq., the *Guardian ad Litem* for Children and a proxy for Class Counsel. On September 6, 2013, the Claims Administrator also submitted a Report to the Court concerning the overhead considerations for the Medical Monitoring Program, after vetting it with the Parties.

On or about September 12, 2013, Class Counsel, Class Finance Committee Representative and Medical Monitoring Finance Committee Member, Virginia M. Buchanan, Esq., submitted a "Notice of Adoption of Guardian ad Litem's Response to Dupont Objections" and a "Request for Consideration by the Spelter Class with Respect to Dissemination of Testing Results" to the Court.

The six issues presented to the Court are resolved below:

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

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

The Court notes that DuPont has made some helpful editing suggestions in its submission to the Court with respect to the letter. The Claims Administrator is expected by the Court to engage in a reasonable amount of outreach to encourage Claimant participation in the Remediation Program and the Medical Monitoring Program.

Subject to this caveat, the Court encourages the Claims Administrator to review the edits of DuPont and make reasonable adjustments as he deems appropriate. The final decision on the wording of the letter, however, shall rest with the Claims Administrator.

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

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

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

The Court does not believe that providing a new Medical Monitoring Card at this time is inappropriate. The Claims Administrator notes that the old card did not include the phone number of the local Spelter Claims Office and the old card did not specifically

state that Medical Monitoring is only for testing and not medical care. The new card cures these deficiencies, thereby allowing the Claimant to better communicate with the Settlement and helping avoid confusion.

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

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

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

The Court approves the Claims Administrator's preparation of an initial screening form to help provide for uniform initial screening of all Claimants. The Court finds that preparing necessary forms to carry out the initial Medical Monitoring Program is within the discretion of the Claims Administrator after receiving input from the Finance Committee and the *Guardian ad Litem* for Children, which he has done. The Settling Parties are encouraged to provide the Claims Administrator with any reasonable edits to

the form, which DuPont has done in its comments, and the Claims Administrator is instructed to consider them in finalizing the form. For example, the Claims Administrator should correct the caption of the form and make the references to CT Scans, as suggested by DuPont. However, the final decision on the wording of the form shall rest with the Claims Administrator.

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

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

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

IT IS ALL SO ORDERED.

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.

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

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Special Master

ENTER: September 18, 2013

Thomas A. Bevell
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 18 day of September, 2013.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
the Seal of the Court this 19 day of September, 2013.

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