

Meredith H. McCarthy

Attorney at Law

901 West Main Street, Suite 201  
Bridgeport, WV 26330

Telephone: (304) 842-9401  
Facsimile: (304) 842-0461

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October 3, 2011

Donald Kopp, Clerk  
Circuit Clerk of Harrison County  
301 West Main Street  
Clarksburg, WV 26301

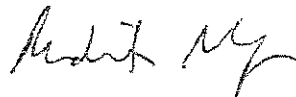
Re: Perrine, et al. v. E.I. DuPont De Nemours & Co., et al.  
Civil Action No.: 04-C-296-2

Dear Mr. Kopp:

Please find enclosed an original certificate of service evidencing service of the attached *Response of Guardian Ad Litem to the Submission of E.I. DuPont De Nemours & Company Related to Preliminary CT Scan Guidelines and Medical Monitoring Budget*. Please file the same in the above-referenced court file.

Should you have any questions regarding this correspondence, do not hesitate to contact me at (304) 842-9401. Your attention to this matter is appreciated.

Sincerely,



Meredith H. McCarthy

Enclosure

cc: The Honorable Thomas A. Bedell  
Edgar C. Gentle, III, Esq.  
Virginia Buchanan, Esq.  
Stephanie D. Thacker, Esq.  
J. Farrest Taylor, Esq.

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

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; et al.,

Defendants.

**RESPONSE OF GUARDIAN AD LITEM TO THE  
SUBMISSION OF E. I. DU PONT DE NEMOURS & COMPANY  
RELATED TO PRELIMINARY CT SCAN GUIDELINES  
AND MEDICAL MONITORING BUDGET**

Now comes Meredith H. McCarthy, Guardian Ad Litem for the minor children and incompetent adults in the above-referenced action, and offers her response to the pleading of Defendant, E.I. du Pont de Nemours and Company (hereinafter DuPont), relative to the submission of the Claims Administrator regarding: 1) Proposed CT Scan Guidelines and 2) Post-Implementation Medical Monitoring Fund Preliminary Budget. Specifically, DuPont argues generally that any CT Scans: a) are to be non-routine; b) are not used as a screening tool; c) carry inherent safety risks; d) that decisions regarding the diagnostic medical necessity should be made by competent physicians; and e) should only be ordered as relevant to alleged heavy metal contamination, after review of claimant blood and urinalysis results. Finally, DuPont takes issue with the preliminary budget because of ambiguities surrounding the total number of claimant participants and the testing costs. With respect to each of DuPont's arguments, this counsel offers the following:

I. THE EXAMINING PHYSICIAN ALONE SHOULD DETERMINE THE  
MEDICAL NECESSITY OF A CT SCAN

All parties agree that the Memorandum Of Understanding (MOU) allows that “no routine CT scans” will be allowed, rather that CT Scans will be provided when “diagnostically medically necessary as determined by a competent physician as relevant to . . . exposure to heavy metal contamination . . .” DuPont contends that the Claims Administrator’s CT Scan Guidelines captured the “key elements” relative to CT Scans and the parties settlement agreement. Specifically, that “a) CT scans are to be non-routine, having been negotiated out of the Medical Monitoring program by the parties;” and “d) Only competent physicians-not the lawyers or the Claims Administrator-may make the decision regarding the diagnostic medical necessity of a CT scan. . . .”

This counsel agrees that CT Scans will not be ordered as a regular course of action or at regularly specified intervals, rather will only be authorized when deemed medically necessary by a competent physician. Thus, if an examining physician determines that a baseline CT Scan is medically necessary due to a claimants heavy metal exposure history and the claimant consents to such CT Scan, than the testing tool falls squarely within the terms of the MOU. Further, any follow-up CT Scan for that claimant which may be required as diagnostically medically necessary also falls within the MOU. Again, counsel for DuPont, class counsel and this counsel all agree that it is the competent physician *exclusively* who determines the medical necessity of any CT Scan upon considering the claimants heavy metal exposure history and the physician’s educational/professional opinion. Thus, the “Signs and Symptoms” language proposed by the Claims Administrator as guidance for the physicians really operates as a restraint and effectively limits the use of CT Scans in the Medical Monitoring Program. Additionally, the “Sings and Symptoms” proposal erroneously

links the medically necessity of chest CT Scans to symptoms rather than heavy metal exposure.

Next, DuPont argues that “b) CT scans are not to be used as a screening tool;” and “c) CT scans carry inherent safety risks. . .” This counsel notes that nowhere in the MOU does it indicate that CT Scans are not to be used as a screening tool to detect disease. Rather, the language is “no routine CT Scans shall be performed”. While a check of a claimant’s vital signs and the blood and urinalysis tests *are* routine as a part of the Program, the CT Scans will be ordered only if deemed medically necessary by the examining physician. The Perrine/DuPont Medical Monitoring Program does not cover the treatment of any disease discovered, thus, the least it should do is allow for the early detection of disease using the most appropriate medical tests available. This seems to be consistent with the overall objective of the Monitoring Program by providing a thorough medical examination for the early detection of subclinical disease related to the claimant’s exposure to arsenic, cadmium, lead and zinc, which was at issue in the litigation.

As to the safety of CT Scans, DuPont’s arguments focus on issues related to radiation exposure in whole-body CT Scans and CT brain perfusion scans. Neither types of CT Scan, nor the corresponding radiation dosage concerns, are applicable to the low-dose chest CT Scan at issue in the Medical Monitoring Program. DuPont’s specific references are misplaced. This counsel acknowledges that the greater risk associated with low-dose CT Scans would be false positive and false negative test results, as well as, complications associated with follow-up biopsy or surgery. However, any decision as to whether the possible risks associated with the CT Scan outweighs the potential benefits derived by the detection of disease should be made on an individualized basis and left between the examining physician and claimant.

Finally, DuPont argues that “e) Any such CT scans may only be ordered as related to the 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.” The Claims Administrator drafted a Preliminary Physician CT Scan Verification Form<sup>1</sup> - to be completed by the participating physician for each CT Scan eligible claimant. The form basically indicates that the examining physician considered *everything* in the examination, including the blood and urine test results, prior to ordering a chest CT Scan for a claimant/patient. Again, this form is not intended to limit the discretion of the examining physician to consider only blood and urine test results (or give said results greater weight) when determining whether to order a low-dose chest CT for a claimant. There is no blood and/or urine test to detect lung cancer, thus, those test results alone will not be conclusive of anything. Rather, they will be considered along with all other claimant information, including vital signs, exposure history, prior medical history and any other additional relevant medical information gathered during the course of the examination- when the competent physician independently determines whether a CT Scan is medical necessity for his/her patient.

Again, this counsel takes the opportunity to request that paragraph 7, regarding factors which satisfy the term medical necessity, including the controversial “Signs and Symptoms” language be excluded from the Claims Administrator’s proposed CT Scan Guidelines. Rather, that the competent examining physician *alone* determine when diagnostically medically necessary CT Scans should be ordered for a claimant as relevant to his/her heavy metal exposure as provided for in the MOU. Also, to respectfully urge this Court to strongly consider the professional opinions of Drs. McGuire

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<sup>1</sup> Briefing on the Physician CT Scan Verification Form is ongoing, and is to be submitted to the Court on October 5, 2011.

and Wertz (submitted initially as Exhibits B and C) when adjudging this critical part of the Medical Monitoring Program.

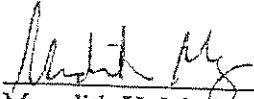
II. DEFERENCE SHOULD BE GIVEN TO THE CLAIMS ADMINISTRATOR REGARDING THE PRELIMINARY BUDGET FOR THE MEDICAL MONITORING PROGRAM COSTS AND EXPENDITURES

With regard to the preliminary budget for the program, DuPont argues that too many uncertainties surround the actual claimant numbers and medical testing costs to render a Final Budget Order. In response, counsel refers to her pleading filed September 21, 2011, regarding the Claims Administrator's preliminary Medical Monitoring Implementation Budget for November 1, 2011 through August 31, 2012 and bridge funding component.<sup>2</sup> Specifically, that the Claims Administrator is in the best position to project claimant participation and medical testing costs given his experience with similar monitoring programs throughout the country and previous relationship with CTIA, the Third Party Administrator. Finally, given that the program is structured as a "pay-as-you-go" model, any overestimation on the Claims Administrators part resulting in overpayment would be credited to DuPont for the next year. Likewise, any underestimation would require an additional payment by DuPont. No monetary contributions would be lost. Accordingly, counsel respectfully requests that the Claims Administrator be given the latitude to provide his educated and experienced estimate on the projected budgetary expenses at issue.

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<sup>2</sup> In the initial submission, counsel erroneously typed "November 1, 2011 through August 31, 2011" rather than November 1, 2011 through August 31, 2012.

Respectfully submitted,



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Meredith H. McCarthy, W.Va. Bar 7540  
*Guardian Ad Litem for class members that  
are minors or incompetent adults*  
901 W. Main St., Ste. 201  
Bridgeport, WV 26330  
(304) 842-9401

CERTIFICATE OF SERVICE

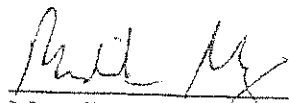
I, Meredith H. McCarthy, do hereby certify that I have this 3<sup>rd</sup> day of October 2011, given notice of the filing of the foregoing *Response of Guardian Ad Litem to the Submission of E.I. Du Pont De Nemours & Company Regarding Preliminary CT Rule and Preliminary Medical Monitoring Budget* upon the following counsel of record, by hand delivery or by depositing a true copy thereof in the United States Mail, postage prepaid, in envelopes addressed to:

Edgar C. Gentle, III, Esq.  
c/o Spelter Vol. Fire Dept. Office  
55 B. Street  
P.O. Box 257  
Spelter, WV 26438  
Claims Administrator

Virginia Buchannan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Raffety & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591

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

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

  
Meredith H. McCarthy