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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.

**SCHEDULING ORDER RESPECTING A POSSIBLE HEALTH STUDY AND THE USE
OF RESIDUAL REMEDIATION FUNDS**

Presently before the Court are two Claims Administrator Reports filed February 10, 2017, and February 21, 2017, respecting the use of funds that remain after the completion of the Settlement Remediation Program and following the payment of the first remediation surplus dividend to the Remediation Class in December 2016.

As stated in the Reports, property remediation has been completed, and approximately \$4 million in previous dividend payments were made to Class Members in December 2016. There is a 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.

A hearing was held on February 22, 2017, at 12:00P.M., to allow the Court to consider the matter. The hearing was attended in person by Edgar C. Gentle, III, the Claims Administrator; Meredith McCarthy, as guardian *ad litem*; Jim Arnold, counsel for DuPont; Farrest Taylor, as Class Counsel; Michael Jacks, as local counsel for the Claims Administrator; Settlement Staff Paul Emerson, Christy Mullins, and Sarah Cayton. The hearing was broadcast on a conference call and attorneys Kip Harbison, Chris Smith, and Jennifer Blankenship, and Medical Advisory

Panel Member and Chairperson, Dr. Bruce Pitt, participated telephonically. Additionally, approximately twenty (20) Remediation Class members attended the hearing in person.

The following is a summary of the record and evidence provided to the Court.

The Claims Administrator presented the issues, and described the fact finding process he undertook in relation to the use of remaining remediation funds, which included mailing a questionnaire to Remediation Class members and conducting Town Hall Meetings to obtain Class Member input. The Remediation Class members are almost uniform in the position that the remaining funds be split up into dividend payments, although there is some disagreement as to how the shares should be distributed. According to the questionnaire results, a small percent of Class Members want some of the remaining funds to be used for Medical Monitoring.

The Claims Administrator noted that the Court has wide discretion in the use of the funds, according to paragraph 2.b. of the Settlement's Memorandum of Understanding (the "MOU"), and noted that the MOU expressly allows the funds to be used for "Medical Monitoring costs and expenses." These might include funding an epidemiological study of test results received to date and logged into an anonymous database with Class member consent, with over 90% so consenting, or funding incentive payments to encourage future medical monitoring participation by paying for travel costs or meal expenses, or providing transportation for disabled Medical Monitoring Claimants.

The Claims Administrator also directed the Court's attention to Dr. Charles L. Wertz, III's March 30, 2007 Medical Monitoring proposal, which is the basis for the Settlement Medical Monitoring Program, except as modified by the MOU. Page 10 of the proposal provides:

That a central repository of the screening, referrals, and outcomes data will be maintained, and depersonalized data made available for epidemiological evaluations. It is clear from my literature review in preparing this document that there is incomplete scientific evidence in the literature on screening programs,

participation rates, referral rates, etc. This data could serve as the basis for answering many of these scientific questions. (Emphasis Added.)

Although a specific proposed health or epidemiology study was not before the Court, the Claims Administrator reported that he has obtained a cost estimate from the scientists that are conducting an epidemiological study of the Mingo County, West Virginia, Medical Monitoring Program, which the Claims Administrator is also administering. They estimate that a one time study in the Perrine DuPont case would cost approximately \$300,000.

Mr. Gentle also offered that approximately 900 (or 60%) of the 1,500 Remediation Class Members also signed up for Medical Monitoring. Therefore, use of remaining remediation funds for medical monitoring would largely benefit the same families. He also pointed out that Medical Monitoring Program participation has been declining sharply, with 4,000 Claimants signing up, 2,000 participating in round 1, 1,000 participating in round 2, and 500 participating in round 3. Therefore, the Claims Administrator suggested that claimant participation incentive payments should be considered by the Court.

Farrest Taylor offered the position of Class Counsel that there are two questions before the Court: 1) whether the Settlement Medical Monitoring Program contemplates an epidemiological study; and 2) if so, should the Medical Monitoring Program, funded by DuPont, pay for it as a Medical Monitoring Program expense, instead of paying for it from the surplus? Mr. Taylor referenced the quote read by Mr. Gentle from Dr. Wertz's report for the proposition that the Medical Monitoring Program includes an epidemiology study that should be paid by the Medical Monitoring Fund, funded by DuPont, and not by the surplus. He also suggested that some of the remaining property funds be distributed as dividends to Medical Monitoring Class Members, to be distributed as dividends to Remediation Class Members, and some should be

used to incentivize participation in the *Medical Monitoring plan* by providing some meal or travel vouchers.

Jim Arnold, on behalf of DuPont, argued that the issue of the epidemiological or health study issue is not yet ripe and before the Court, because there has been no formal proposal of a specific epidemiological or health study by the Claims Administrator and no motion therefor from Class Counsel. Mr. Arnold further stated that DuPont has no objection to the remaining funds being paid out as a dividend to Remediation Class Members. Mr. Arnold finally stated that if there is any proposed use for medical monitoring for the remaining property funds, that DuPont wants the opportunity to comment prior to any final order being issued by the Court.

Meredith McCarthy spoke on behalf of the minors and incompetent adults in the Class and stated that they support the position offered by Mr. Taylor.

Dr. Pitt stated that the Medical Advisory Panel needs to study whether an epidemiological or health study may help the Panel determine what adjustments should be made to the Medical Monitoring Program testing protocols at this time. Dr. Pitt stated that further time to study the issue would aid the Panel in providing its written recommendation.

Next, the Court heard from some of the Class Members in attendance at the hearing.

Mr. Albert Sheaffer spoke, and stated that he believed the money should be paid as a dividend, with no funds for medical monitoring, and that Zone 1A claimants with longer time spans spent in Zone 1A should be prioritized for the payments.

Mr. Matt Shingleton, the Assistant Chief, spoke on behalf of the Spelter Volunteer Fire Department, and requested that the Court consider disbursing some of the remaining funds to the Fire Department, because it is losing the Settlement as a tenant and provides fire protection and

first responder services to the community. Mr. Shingleton noted that any disbursement of funds to the Fire Department would benefit the entire community.

Mrs. Helen McCullough spoke, and stated that she lives in Zone 3, and has had significant health issues discovered through the medical monitoring program. Mrs. McCullough noted that since medical monitoring pays for early detection of medical conditions, but not treatment, the remaining funds should be distributed to Class Members, which may allow them to pay for medical bills or other expenses.

Mrs. Mable Kovar, a Zone 3 resident, spoke, and she noted that many of her family members and neighbors have already died, and requested that the funds be distributed to Class Members to help them pay for medical bills.

Mrs. Darlene Koontz, a nonresident Zone 1A property owner, spoke and she stated that the remaining funds should only go to Zone 1A residents as a dividend, because the Class Members who lived further away from the smelter did not suffer the same impact.

To facilitate disable Claimant transportation for the Medical Monitoring Program, the Claims Administrator suggested that the Settlement's vehicle be donated to the Spelter Volunteer Fire Department, at the time it is no longer needed by the Settlement, but to be on loan from the Fire Department to the Settlement to use for transporting disabled Medical Monitoring Claimants or as otherwise necessary for the Settlement.

After hearing from those attending the hearing, the Court hereby determines that further input is necessary prior to making a ruling on this matter.

To allow the matter to be fully briefed and presented to the Court, it is hereby **ORDERED** that:

- 1) The Medical Advisory Panel and Claims Administrator have forty-five (45) days to develop a more detailed proposal on the possible uses of the remaining funds for medical monitoring, including possibly an epidemiological or health study and possible Claimant participation incentive payments, and disabled Claimant transportation, and to present it to the Court and the Parties;
- 2) Thereafter, Class Counsel has thirty (30) days to present a position as to whether an epidemiological or health study is necessary and appropriate, and if so, whether the residual property funds or the Medical Monitoring Fund funded by DuPont should bear the burden of paying for it, as well as any suggestion on incentive payments and disabled Claimant transportation;
- 3) Thereafter, Counsel for DuPont shall have an additional thirty (30) days to respond.

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.

IT IS SO ORDERED.

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

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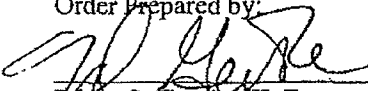
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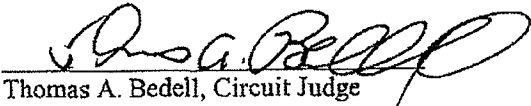
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ENTER: Mar 9, 2017


Thomas A. Bedell, Circuit Judge