IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. E.I. DuPONT de NEMOURS & COMPANY, Defendant.	CLASS ACTION CIVIL ACTION NO. 06-1810 (RMB)
MISTY SCOTT, individually and on behalf of all others similarly situated, Plaintiffs, v. E. I. DU PONT DE NEMOURS AND COMPANY, Defendant.	CLASS ACTION CIVIL ACTION NO. 06-3080 (RMB) **JOINT NOTICE OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, APPOINTMENT OF CLASS ADMINISTRATOR AND ENTRY OF FINAL JUDGMENT ON CLASS CLAIMS**

PLEASE TAKE NOTICE as soon as counsel may be heard, the undersigned attorneys for Defendant and the attorneys for Plaintiffs' shall move before the United States District Court for the District of New Jersey, before Honorable Renée M. Bumb, at the Mitchell H. Cohen U.S. Courthouse, 1 John F. Gerry Plaza, Camden, New Jersey, for a Final Order of Class Settlement, Appointment of Class Administrator and Entry of Final Judgment on Class Claims, and

PLEASE TAKE FURTHER NOTICE that, in support of its motion, the Parties rely upon the Memorandum of Law in Support of the Motion, Attorney Declarations and accompanying exhibits, and

PLEASE TAKE FURTHER NOTICE that a proposed form of Order granting the relief requested is submitted herewith in accordance with the provisions of *L. Civ. R.* 7.1(e).

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Dated: May 24, 2011

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RICHARD A. ROWE, ET AL., individually and on behalf of themselves and all others similarly situated, **Plaintiffs,** **vs.** **E. I. DUPONT DE NEMOURS AND COMPANY,** **Defendant.**	**CIVIL ACTION NO.: 06-1810-RMB-AMD**
MISTY SCOTT, on behalf of herself and all others similarly situated, **Plaintiff,** **vs.** **E. I. DUPONT DE NEMOURS AND COMPANY,** **Defendant.**	**CIVIL ACTION NO.: 06-3080-RMB-AMD**

JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, APPOINTMENT OF CLASS ADMINISTRATOR, AND ENTRY OF FINAL JUDGMENT ON CLASS CLAIMS

I. INTRODUCTION

Richard A. Rowe, Michelle E. Tomarchio, Regina M. Trout, Allen K. Moore, Catherine A. Lawrence and Misty Scott, (collectively "Class Representatives") and Defendant E. I. du Pont de Nemours and Company ("DuPont") seek final approval under Federal Rule of Civil Procedure 23(e) of the proposed Settlement of the Class Claims in the above-referenced Actions.[1] The Parties also ask the Court to appoint a class administrator, and to enter final judgment on the Class Claims, pursuant to Federal Rule of Civil Procedure 54(b).

As indicated in the joint submission filed by the Parties on February 22, 2011, seeking preliminary approval of this Settlement (the "Preliminary Approval Papers")(*Rowe* Doc. 501/*Scott* Doc. 438), the Settlement provides that DuPont pay a total of $8,300,000.00, inclusive of class counsel attorneys' fees and expenses and settlement administration expenses. The Parties reached this proposed settlement after more than four years of litigation, multiple mediations and settlement conferences, and months of arms-length negotiation. The end result is a Settlement that is fair, adequate, and reasonable. Class Members will select one of two Class Benefits, either an in-home water filtration package (i.e., the Filter Option) or, for those who already have filters or otherwise do not want the offered Filter Option, an Incidental Payment Option of equivalent value. In exchange for the Class Benefits, the Class Members will resolve the common law nuisance claims for injunctive relief that the Court certified in its March 22, 2011, Amended Class Certification Order and will release DuPont only for those Class Claims in

[1] Capitalized terms shall have the meaning assigned in the Class Settlement Agreement (hereinafter "Settlement"), which was previously submitted to the Court on February 22, 2011. (*See Rowe* Doc. 501-3).

accordance with the terms of the Settlement Agreement, previously submitted to the Court with the Preliminary Approval Papers. (*See Rowe* Doc. 501-3.)

As preliminarily determined by the Court following the preliminary fairness hearing on March 22, 2011, and for the reasons reiterated below, the proposed Settlement represents a fair and adequate, tangible, and certain result for the Class Members. (*See* Preliminary Approval Order (*Rowe* Doc. 508/*Scott* Doc. 445) (the "Order"), at 3-4. *See also* March 22, 2011, Preliminary Fairness Hearing Transcript (*Rowe* Doc. 509) ("Hrg. Tr."), at 25-40 (attached as Ex. A to the Declaration of John M. Johnson in Support of the Parties' Joint Motion for Final Approval of Class Action Settlement, Appointment of Class Administrator, and Entry of Final Judgment on Class Claims ("Johnson Dec.").) The Class Representatives fully support Court approval of the Settlement. (*See* Johnson Dec., at Ex. B (copies of each named class representative's agreement to participate in settlement).)

As explained below, since the Court preliminarily approved the Settlement, the Court-approved Class Notice (dated April 4, 2011) has been sent to the Class Members in compliance with the approved Notice Plan, disclosing the terms of the Settlement and providing both opt-out and objection opportunities. (*See* Declaration of David B. Byrne, III, in Support of Parties' Joint Motion for Final Approval of Class Action Settlement, Appointment of Class Administrator, and Entry of Final Judgment ("Byrne Dec."), at ¶¶ 7-14.) Of the thousands of Class Members receiving Notice, only 27 individual Class Members (less than 0.3 % of the total estimated) chose to opt-out and none of the Class Members[2] expressed any reservations about the terms of the Settlement. (*See id.*, at ¶¶ 12 & 18, Ex. 3 (Class Member opt-out list – filed under seal).)

[2] *See* Section B(2) below. Although Class Counsel received three objection letters, (*see* Byrne Dec., at Ex.5 – filed under seal), none of them were lodged by Class Members.

This implementation of the Court's approved Notice Plan, the low number of opt-outs, and absence of Class Member objectors further support final approval of the Settlement, which the Court preliminarily found to be "fair, just, reasonable, valid, and adequate," subject to any objections received through implementation of the Notice Plan. (Order, at 3.)

As noted by the Court during the preliminary fairness hearing, the Court's obligation under Rule 23(e) is to determine if the Settlement is "fair, reasonable and adequate." (Hrg. Tr., at 25.) *See also* Fed. R. Civ. P 23(e). The Third Circuit has identified nine factors often referred to as the "*Girsh* factors" to guide this inquiry: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. (Hrg. Tr. at 26 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)). *See also In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 785-86 (3d Cir.1995). During the preliminary fairness hearing in March, the Court carefully and thoroughly reviewed the Settlement in connection with each of these nine factors, other than the reaction of the class, which was not possible to assess at that time. (*See* Hrg. Tr., at 26-32.) The Court also thoroughly evaluated the Settlement in terms of several additional factors known as the "*Prudential* factors," including the maturity of the underlying issues, the development of scientific knowledge, the extent of discovery on the merits, the ability to assess the probable outcome at trial, and whether opt-out rights are provided. (*Id.*, at 32-34 (citing *In re Prudential*,

148 F.3d at 323.)) The Court preliminarily determined that each of these *Girsh* and *Prudential* factors supported approval of the Settlement, subject to whatever objections might be raised by Class Members through implementation of the Notice Plan. (*Id.*, at 40; Order, at 3-4.) Now that the Notice Plan has been implemented and Class Members have been provided the opportunity to react to the Settlement, the Parties seek final approval of the Settlement under Rule 23(e). A proposed final order and judgment (the "Final Order") consistent with the Parties' agreement is included with the Johnson Dec. as Ex. C.

In connection with final approval of the Settlement, the Parties also hereby jointly seek formal appointment of Edgar C. Gentle, III, as Class Administrator for the Settlement, pursuant to the Class Administrator Agreement entered between the Parties and Mr. Gentle (the "Administrator Agreement"), (s*ee* Johnson Dec., at Ex. D), and the Settlement terms. The Parties agree that Mr. Gentle has the proper qualifications and experience to implement the terms of the Settlement and Administrator Agreement with respect to distribution of the Settlement Amount and Class Benefits, (*see id.*, at Ex. E), and Mr. Gentle has consented to such appointment and to discharge such duties as required under the Settlement and Administrator Agreement. (*See id*., at Ex. D.) The Parties, therefore, jointly move the Court to appoint Mr. Gentle as Class Administrator, and have included the appropriate language in the proposed Final Order for the Court.

II. PROCEDURAL HISTORY

A. Background of the Lawsuits

1. The *Rowe* Action.

On April 18, 2006, the *Rowe* plaintiffs filed a class action lawsuit against DuPont. They alleged that their drinking water contained PFCs, including ammonium perfluorooctanoate ("PFOA"), a substance that purportedly came from DuPont's Chambers Works facility in Salem County, New Jersey. For their class claims, the *Rowe* plaintiffs requested equitable and injunctive relief pursuant to Federal Rule of Civil Procedure 23(b)(2); they did not seek personal injury or property damages on behalf of the proposed class.[3]

The *Rowe* plaintiffs initially moved for class certification of their injunctive and equitable claims in 2008. After several rounds of briefing, the Court ultimately certified only the private nuisance claim for class treatment and denied certification of any other claims or issues. In its October 9, 2009, Opinion, the Court certified the following Rule 23(b)(2) private nuisance subclass:

> All individuals who, as of the date of this Opinion, have an ownership interest in a private well within a two-mile radius of DuPont's Chambers Works plant, which supplies drinking water containing PFOA.

On February 22, 2011, the Parties jointly moved to amend the class certification order to slightly modify the private nuisance class definition to be as follows:

> Any individual who as of the date of Class Notice of the Settlement has an ownership interest (meaning owns or leases)

[3] The *Rowe* plaintiffs assert individual claims for compensatory damages, however. The Named Plaintiffs are settling their individual, non-class claims separately.

> in and occupies a residence located within two miles of the Chambers Works Plant that has a private well for drinking water that contains PFOA.

(*Rowe* Doc. 502-1, at 6.) The Court granted the joint Motion on March 22, 2011, to amend the Rule 23(b)(2) private nuisance class definition, as requested by the Parties. (*See* Order, at 3; Hrg. Tr., at 36-38.)

2. The *Scott* Action.

The *Scott* action was filed on June 14, 2006, in Salem County Superior Court. DuPont removed the action to this Court on July 7, 2006. As with the *Rowe* case, the *Scott* case was filed as a putative class action for equitable and injunctive relief from allegedly excessive levels of PFOA in drinking water. After several rounds of briefing, the Court certified only the following 23(b)(2) public nuisance subclass in its October 9, 2009, Opinion:

> All individuals who, as of the date of this Opinion, are residential water customers of PGWS that have an ownership interest (meaning own or lease) in their real property served by PGWS, which supplies drinking water containing PFOA.

The Court also certified the following strict liability issue for class treatment pursuant to Rule 23(c)(4):

> Whether DuPont's release of PFOA constitutes an 'abnormally dangerous activity.'[4]

On February 22, 2011, the Parties jointly moved the Court to amend the class certification order in the *Scott* case to allow for a slight modification of the public nuisance class definition and to decertify the strict liability issue. (*Scott* Docket No. 439). With respect to the Rule 23(b)(2) public nuisance class, the Parties jointly requested that the definition be modified

[4] As with the *Rowe* plaintiffs, Ms. Scott has asserted separate, individual claims for relief that she is settling separately.

to read as follows:

> Any individual who as of the date of Class Notice of the Settlement has an ownership interest (meaning owns or leases) in and occupies a residence with drinking water supplied by the Penns Grove Water System.

(*Id.*, at 6.) Order, at 3. On March 22, 2011, the Court granted the Parties joint motion to modify the public nuisance class definition and to decertify the strict liability nuisance issue class. (Order, at 3; Hrg. Tr., at 36-38.)

As such, the only claims being resolved by this Settlement are the public and private common law nuisance claims for injunctive relief of those individuals who *both* have an ownership interest in (meaning owns or leases) *and occupy* the properties at issue as of the date Class Notice was issued on April 4, 2011.

B. The Litigation

As detailed in the Parties' Preliminary Approval Papers, and as noted by the Court during the March 22, 2011, preliminary approval hearing, the Parties have litigated the toxic tort claims in the "very complex" *Rowe* and *Scott* cases for more than four years. (Hrg. Tr., at 26-28.) The Parties have engaged in extensive discovery and motion practice. More than three million pages of documents were exchanged; over fifty depositions were taken across the country; and dozens of interrogatories, requests for production, and requests for admission were propounded and answered. In addition, in support of their claims or defenses, the Parties identified more than two dozen expert witnesses in numerous disciplines ranging from toxicology to epidemiology to chemical fate and transport. (*Id.*)

DuPont moved for summary judgment on the Class Claims and individual claims and

moved to exclude many of the Class Representatives' expert witnesses. Likewise, the *Rowe* Plaintiffs moved for summary judgment on one of their individual claims for injunctive relief, and the Class Representatives filed multiple *Daubert* motions.

On December 13, 2010, the parties filed a motion for preliminary approval of an earlier, proposed class settlement. (*Rowe* Doc. 492/*Scott* Doc. 430.) On December 16, 2010, the Court conducted a hearing to consider that motion for preliminary approval and denied the motion with instructions to the Parties to revisit the proposed settlement terms. (*Rowe* Doc. 496/*Scott* Doc. 434.) Following the December 16 hearing, the Parties continued to discuss settlement in light of the Court's ruling and were eventually able to reach agreement on a revised settlement. The parties filed a second motion for preliminary approval (this time for the current Settlement before the Court) on February 22, 2011. (*Rowe* Doc. 501/*Scott* Doc. 438.) The Court held a hearing on the revised class action settlement and entered an Order preliminarily approving it on March 22, 2011. (*See* Order.) The Order directed counsel to comply with certain deadlines set forth in the Order, including implementation of a court-approved Class Notice Plan providing opportunity for opt-outs and objections, and set a final fairness hearing for June 14, 2011. (*See id.*) As set out below, the parties have completed implementation of the Notice Plan approved in the Preliminary Approval Order, and the Settlement is now ripe for final review and approval, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

III. THE PROPOSED RELIEF

The Settlement will resolve only the nuisance Class Claims for injunctive relief. In exchange for the Class Benefits that DuPont will fund in compromise of the Class Claims, the Class Representatives and the Class Members will release DuPont from liability, without any

admission of wrongdoing, with respect only to the Class Claims, in accordance with the terms of the release set forth in the Settlement Agreement. The total Settlement Amount of $8,300,000.00 will be used to fund a Class Benefits program under which Class Members will select either an in-home water filtration package (i.e., the Filter Option) or, for those who already have filters or otherwise do not want the Filter Option, an Incidental Payment Option of equivalent value. The Class Benefits program was explained in more detail in the various Preliminary Approval Papers and submissions from the Parties on February 22, 2011, supplemental materials filed in support of such preliminary approval, and during the preliminary approval hearing on March 22, 2011. As noted by counsel during the March hearing, the Parties have also selected an experienced and qualified individual to serve as Class Administrator under the Settlement, who will be responsible for distributing the Class Benefits in a manner consistent with the Settlement terms. (*See* Hrg. Tr. 11-12.)

DuPont also has agreed not to object to a reasonable application by Class Counsel for fees and expenses, with the understanding that any award approved by the Court would come from the Settlement Amount. The Parties believe that the benefits offered to the Class Members from the proposed settlement of their Class Claims for injunctive relief meet or exceed the benefits from continued litigation.

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Standards for Final Approval of Class Settlement

The Parties believe that the Settlement is fair, reasonable, adequate, and worthy of final judicial approval. The public interest favors settling litigation, particularly class actions.

Ehrheart v. Verizon Wireless, 609 F.3d 590, 592 (3d Cir. 2010)("a strong public policy exists, which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation"); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3d Cir.)("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation"), *cert. denied*, 516 U.S. 824 (1995). Settlement of complex class actions minimizes the parties' litigation expenses and reduces the strain such litigation imposes on scarce judicial resources. *Ehrheart*, 609 F.3d at 595. ("Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts. In addition to the conservation of judicial resources, the parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial"). *See also* Hrg. Tr., at 25.

"In deciding whether to approve a settlement, the court must carefully balance two competing interests: 'On the one hand, the Court must scrupulously ensure that the proposed settlement is in the best interests of class members by reference to the best possible outcome. On the other hand, the court must not hold counsel to an impossible standard, as settlement is virtually always a compromise.'" *Hawker v. Consovoy*, 198 F.R.D. 619, 627 (D.N.J. 2001). While Rule 23 requires courts to "act as fiduciaries for the absent class members, [it] does not vest [the Court] with broad powers to intrude upon the parties' bargain." *Ehrheart*, 609 F.3d at 592.

"After the parties reach a class action settlement, the court should approve the settlement if it is 'fair, reasonable and adequate.'" *Hawker*, 198 F.R.D. at 627; *see also Ehrheart*, 609 F.3d

at 592 ("a district court determines whether the settlement is fundamentally fair, reasonable, and adequate"); Hrg. Tr., at 25.

> The Third Circuit has adopted a nine-factor test to help district courts structure their final decisions to approve settlements as fair, reasonable, and adequate as required by Rule 23(e). 'Those factors are: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.' *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 785-86 (3d Cir.1995).

Yong Soon Oh v. AT & T Corp., 225 F.R.D. 142, 145 (D.N.J. 2004). Courts often refer to these as the *Girsh* factors because the Third Circuit announced them in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1957). (*See* Hrg. Tr., at 26.) The fifth and seventh factors do not apply in these Actions because the plaintiff classes do not seek compensatory damages. *Hawker*, 198 F.R.D. at 632 & n. 17; Hrg. Tr., at 29 and 31 (Court notes fifth and seventh factors not relevant here).[5]

At this final stage of the settlement approval process, the Court makes a determination of the fairness of the proposed settlement on the basis of written submissions and presentations

[5] In addition to the *Girsh* factors, "district courts should also consider other potentially relevant and appropriate factors, including, among others: 'the maturity of the underlying substantive issues, as measured by the experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved-or likely to be achieved-for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable." *Dewey v. Volkswagen of America*, 728 F. Supp. 2d 546, 573 (D.N.J. July 30, 2010)(quoting *In re AT & T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006)). During the preliminary approval hearing in March, this Court carefully reviewed each of these additional factors and found that they supported approval of the settlement. (*See* Hrg. Tr., at 32-34.)

from the settling parties. Fed.R.Civ.P. 23(e); Manual for Complex Litigation, § 21.634 (4th ed. 2004)("At the fairness hearing, the proponents of the settlement must show that the proposed settlement is 'fair, reasonable and adequate.'"); *In re General Motors Corp*., 55 F.3d 768, 785 (3d Cir. 1995); *Hall v. AT&T*, 2010 WL 4053547 at *6 (D.N.J. 2010)("Under Rule 23, a court may only approve a class settlement after it has held a hearing and determined that the settlement is 'fair, reasonable and adequate.'").

B. Application of the Girsh Factors

On March 22, 2011, this Court carefully evaluated the Settlement pursuant to the Third Circuit's nine-factor *Girsh* fairness test (and under the additional *Prudential* factors), and preliminarily determined that the Parties' proposed Settlement is fair, reasonable, and adequate. (*See* Order, at 3; Hrg. Tr., at 25-40). At that point, the only relevant factor that the Court could not evaluate was the reaction of the Class Members to the Settlement. (*See* Hrg. Tr., at 27.) The Court correctly noted that such Class Member reaction could not be evaluated until "after the class members have received notice and an opportunity to object or opt-out." (*Id.*) Now that the Class Notice Plan has been implemented and Class Members have received the Class Notice and right to object or opt-out, the Court can assess this last factor. As explained below, the favorable reaction of the Class Members to the Settlement further supports and strengthens the Court's preliminary determination that the Settlement should be approved. *See, e.g., Hall,* 2010 WL 4053547 at *7 (citing *In re Warfarin Antitrust Litig.,* 391 F.3d 516, 535 (3d Cir. 2004)) ("[a] presumption of fairness exists where a settlement has been negotiated at arm's length, discovery was sufficient, the settlement proponents are experienced in similar matters, and there are few objectors.")

(1) *Girsh* Factor No. 1: The complexity and duration of the litigation.

Complex scientific and legal issues pervade this litigation. For example, the Parties have collectively presented opinions from nearly two dozen experts in a variety of disciplines ranging from toxicology to epidemiology to chemical fate and transport. This litigation is not only complex but lengthy, spanning more than four years so far. It will continue for many months to come, if not longer, if the case does not settle. The complexity and expense of ongoing litigation is significant. The Parties have filed numerous motions for summary judgment and motions to exclude expert witnesses, which were not resolved prior to reaching this settlement agreement. Those motions are based on evidence gleaned from three million pages of documents, more than 50 depositions, and dozens of discovery responses. Further litigation, potentially including appeals to the Third Circuit, will be time consuming, expensive, and difficult. *Dewey v. Volkswagen of America*, 728 F.Supp.2d 546 (D.N.J. 2010)(finding that proposed class settlement satisfied *Girsh* factors where litigation had been underway for more than two years; fact discovery which included "more than fifty depositions throughout the United States, the exchange of thousands of documents, some of which were in a foreign language, and consultation with numerous automotive experts" was to end in two weeks; discovery materials allowed class counsel to assess both the factual and legal strengths and weaknesses of their case and engage in arms-length negotiations; and "even if the class were certified and succeeded at trial, class counsel astutely recognize that the defendants would likely appeal."). Based on these various facts, this Court preliminarily determined on March 22, 2011, that "this factor favors preliminary approval of the settlement." (Hrg. Tr., at 26-27.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the

Settlement.

(2) *Girsh* Factor No. 2: The reaction of the class to the settlement.

Courts within the Third Circuit typically consider the number of objectors and opt-outs as an indication of the reaction of the class to the proposed settlement. *See, e.g., In re CertainTeed Corp. Roofing Shingle Prod. Liab. Lit.*, 269 F.R.D. 468, 485 (E.D. Pa. 2010); *In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Lit*, 263 F.R.D. 226, 239 (E.D.Pa. 2009). Approval is favored where the number or percentage of objectors is small in comparison to the number of class members as a whole. *Id.*, (citing *Varacallo v. Mass. Mut. Life Ins. Co*., 226 F.R.D. 207, 251 (D.N.J. 2005)(because only .06% of the class members opted out of the settlement, this factor favored approval); *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1313-1314 (3d Cir. 1993)(small number of objectors does not favor derailing settlement)). *See also Dewey*, 728 F. Supp.2d at 601 ("less than 1% of the class" objecting or opting out is an "extraordinarily low percentage of class members voicing dissatisfaction" and "shows that the supermajority of the class consents to the settlement"); *Hall*, 2010 WL 4053547 at *8 ("Generally, 'silence constitutes tacit consent to the agreement.'" (citing *In re General Motors*, 55 F.3d at 812.))

Here, Class Counsel mailed the Court-approved Class Notice to approximately 4250 Class Households in which approximately 10,000 estimated Class Members reside, notifying the Class Members of the Settlement terms and their right to object or opt-out. (*See* Byrne Dec., at ¶ 12.) Only 27 individual Class Members[6] (representing less than 0.3% of the total estimated

[6] Among the 27 opt-outs were 5 individuals who identified themselves as current and/or former employees of DuPont. (Byrne Dec., at Ex. 3 – filed under seal.). Although additional purported "opt-outs" were submitted to Class Counsel and the Court on May 12, 2011, those forms were submitted after the Court-ordered deadline of May 9, 2011, and are thus not properly before the Court.

Class members) timely excluded themselves from the Settlement by opting out, and only four persons (only approximately 0.04% of the total estimated Class Members) timely purported to express any reservations about the terms of the settlement. (*See id.*, Exs. 3 and 5 – filed under seal.) None of the four timely, purported objectors, however, are even members of the Class with standing to object. *See Sowers v. Freightcar America, Inc.*, 2008 WL 4949039 at *1 (W.D. Pa. 2008)("Only parties to the civil action have standing to object absent extraordinary circumstances"). One purported objector (Penns Grove Associates) is not an "individual," as required in the Class definitions, but a business entity. (*See* Byrne Dec., at Ex. 5 – filed under seal.) Three of the purported objectors (Penns Grove Associates, Samuel Switzenbaum, and Kenneth W. Jordan) also lack standing to object because, although they claim to own the real property at issue (all three purport to be property owners/landlords), they do not also *occupy or* reside in the property, which is expressly required by the Class definitions in order to be a Class Member. (*See id*.) Moreover, even if these persons were proper Class Members with standing to object, the substance of their objections go to alleged impact on property values or other compensatory damage-type claims that are not resolved or released by this class Settlement and are, therefore, irrelevant to a proper evaluation of the fairness and adequacy of this Settlement, which only resolves the class nuisance claims for injunctive relief. Finally, several of these same purported "objectors" (Penns Grove Associates, Sam Switzenbaum, and ShaKai L. Ellis) have also chosen to "opt-out" of the Settlement by submitting opt-out forms and thus no longer have any standing to pursue objections to the Settlement they have opted out of. *See* 4 Newberg on Class Actions § 14.41, n.10 (4th Ed)(nonparties to a settlement generally do not have standing to object). The specific objections and opt-outs are discussed in more detail below.

One of the objections received by the Parties was in a letter dated May 9, 2011, from Kenneth W. Jordan of Carney's Point, NJ. (*See* Byrne Dec., Ex. 5 – filed under seal.) Mr. Jordan confirms in his letter that he does not actually reside in the Class area but learned about the Settlement from a neighbor. Apparently, Mr. Jordan owns a building within the Class area in which other individuals actually occupy the property at issue as "tenants" (none of which are actually objecting to any aspect of the Settlement). (*See id.*) Thus, because he does not both own and occupy the property at issue, he is not a proper Class Member and, as discussed above, has no standing to assert any objections to the Settlement. *See Morlan v. Univ. Guar. Life Ins. Co.*, 2003 WL 22764868 at * 2 (S.D. Ill. 2003)(unpublished opinion)(objector is not a class member and therefore lacks standing to object to the settlement agreement). Moreover, because he is not a Class Member, Mr. Jordan is not compromising any of his individual claims by virtue of this Settlement of only the Class Members' Class Claims. Thus, even if the Court were to consider the substance of Mr. Jordan's concerns relating to his desire to "reserve [his] property rights" and to not be barred from any potential pursuit of his own "future water quality remediation from DuPont," Mr. Jordan is not a Class Member and thus gives up nothing with respect to any of his rights or future claims if this Settlement is approved. For these reasons, Mr. Jordan's "objection" should not be considered as a basis upon which to reject final approval of any aspect of the Settlement.

Another purported "objection" letter (also dated May 9, 2011), was received by the Parties from counsel for Samuel Switzenbaum (an individual) and Penns Grove Associates (a business entity). (*See id.*) Like Mr. Jordan, however, Mr. Switzenbaum also does not live in the Class area or occupy a residence in the Class area. Both he (and Penns Grove Associates) are

purported owners/landlords for rental property in Penns Grove. Thus, like Mr. Jordan, neither Mr. Switzenbaum nor Penns Grove Associates is a Class Member with standing to assert any objections to any aspect of the Settlement.[7] *See Morlan*, 2003 WL 22764868 at * 2. Moreover, like Mr. Jordan, because neither Mr. Switzenbaum nor Penns Grove Associates is a Class Member, neither is in any way bound by any aspect of the Class Settlement, and neither is releasing or in any way compromising individual claims or rights, whatever they may be. Even if Mr. Switzenbaum or Penns Grove Associates could somehow be viewed as Class Members, (which, based on their own submissions and this Court's Orders, they are not), neither would have standing to assert any objections, because both submitted opt-out forms through their counsel. (*See* Byrne Dec., at Ex. 4 – filed under seal.) Consequently, neither Mr. Switzenbaum nor Penns Grove Associates has any standing to assert any objections, thus their "objections" cannot serve as a basis for disapproving any aspect of the Settlement. *See Morlan*, 2003 WL 22764868 at *2.

The final objection letter received by the Parties was from ShaKai L. Ellis. (*See* Byrne Dec., Ex. 5 - filed under seal.) In her May 9, 2011 letter, Ms. Ellis expresses certain concerns about the proposed Settlement but fails to note that, in response to those concerns, Ms. Ellis properly availed herself of the option of opting out of the entire Settlement, thereby preserving

[7] On May 12, 2011, after the court-ordered objection deadline, Counsel for Mr. Switzenbaum and Penns Grove Associates also submitted a letter to Class Counsel purporting to join two new persons, Ron Keller and Sheila Uhrick, to the earlier-served objections of Mr. Switzenbaum and Penns Grove Associates. (*See* Byrne Dec., Ex. 5 – filed under seal.) Not only was that attempt to object untimely under the Court's Order, but the late letter also failed to comply with the Court's Order to specify whether the purported objectors are current or former employees, agents, or contractors of DuPont and whether they actually intended to appear at the final fairness hearing. (*See* Order, at ¶ 8.) Thus, the purported objections of Mr. Keller and Ms. Uhrick are both untimely and invalid.

her right to pursue all of her own claims, including any of the nuisance claims for injunctive relief being resolved under the Settlement, and thereby mooted her "objections" to the Settlement, as she is no longer a Class Member. (*See* Byrne Dec., at Ex. 3 – filed under seal (Ellis opt-out form, dated May 6, 2011)). *See* Manual Complex Lit. § 21.643 (4th Ed)("A class member who does not opt out may object to a settlement."); *Mayfield v. Barr*, 985 F. 2d 1090, 1092 (D.C. Cir. 1993) (standing required to challenge class action settlement). *See also In re Vitamins Antitrust Class Actions*, 215 F.3d 26, 29 (D.C.Cir.2000) ("'[T]hose who fully preserve their legal rights cannot challenge an order approving an agreement resolving the legal rights of others.'")(quoting *Mayfield*, 985 F. 2d at 1093)); *In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1102 (10th Cir. 2001) ("Non-settling defendants generally have no standing to complain about a settlement, since they are not members of the settling class." (quotation omitted)). Because Ms. Ellis opted out of the Settlement and is no longer a Class Member, the "objections" set forth in her letter cannot serve as a basis for rejecting final approval of any aspect of the Settlement.8

In summary, although three objection letters were received by Class Counsel, none of them was submitted by actual Class Members. In other words, not a single Class Member

[8] Even if Ms. Ellis' concerns were properly before the Court, the substance of her concerns could not impact approval of the Settlement. More specifically, Ms. Ellis complains about the impact of the Settlement on potential future personal injury/health claims and property values. (*See* Byrne Dec., Ex. 5 – filed under seal) Yet, as explained above, this Settlement does not resolve or release any such personal injury or property damage claims. Ms. Ellis also complains that the Settlement does not provide enough water filters or replacement cartridges but Ms. Ellis fails to identify what number of filters or cartridges she believes would be adequate, and fails to acknowledge that the Settlement expressly provides that more than 10 replacement cartridges may in fact be provided, depending on the total number of participating Class Households. Ms. Ellis' concern about the alleged lack of information on potential health risks from PFOA in the water is also misguided as the Class Counsel sent letters to Class Members providing a link to information made available by the Minnesota Department of Health on such topics. (*See* Byrne Dec., Ex. 2.)

objected to any aspect of this Settlement. The Class Representatives in these Actions made the decision to obtain meaningful class-wide relief on behalf of the Class Members. (*See* Johnson Dec., Ex. B) The settlement decision by the Class Representatives is clearly supported by the small number of opt-outs, the lack of objections by Class Members, and the Class's positive reaction to the Settlement.

(3) *Girsh* Factor No. 3: The stage of the proceedings.

The third *Girsh* factor requires the Court to consider the stage of the proceedings and the amount of discovery that has been completed. This factor "captures the degree of case development that class counsel have accomplished prior to settlement." *In re Cendant*, 264 F.3d 201, 235 (3d Cir. 2001) (quoting *In re Gen. Motors*, 55 F.3d at 813). This allows a Court to "determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Gen. Motors*, 55 F.3d at 813.

The Class Representatives and Class Members are represented by experienced Class Counsel who have thoroughly evaluated the likelihood that the Class Claims will succeed on the merits. Because discovery is closed and the Parties have fully briefed dispositive motions, Class Counsel are well-positioned to evaluate the likelihood of success, should this litigation proceed. DuPont is also represented by experienced counsel who understands the time and expense that continued litigation, trial and appeal would require in this complex case. Given that each Party has had the opportunity to evaluate these issues with experienced counsel, this factor weighs in favor of approving the settlement. *Dewey*, 728 F. Supp. 2d at 572 ("Experienced class counsel's approval is entitled to considerable weight and favors finding that the settlement is fair."); *Cohen v. Chilcott*, 522 F. Supp. 2d 105, 118 (D.D.C. 2001)(finding that after review of one million

documents, twenty depositions, and exchange of expert reports, parties had sufficient information to assess the risks of litigation vis-à-vis the probability of success and range of recovery).

Based on the foregoing, this Court preliminarily determined in March 2011 that "[t]here can be no question, given the extent of this litigation, that counsel have clearly had more than an adequate opportunity to appreciate the merits of the case." (Hrg. Tr., at 28.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

(4) *Girsh* Factor No. 4: The risk of establishing liability.

DuPont vigorously disputes liability in these cases, has moved for summary judgment on all counts, has moved to exclude the opinions and testimony of plaintiffs' key experts, and has challenged the basis for certification of certain claims. As such, the Class Representatives face significant and potentially meritorious defenses based on the facts and the law, if the cases proceed to trial. Because the Court has not yet ruled on any of the dispositive or expert motions, the Class Representatives face considerable risks as to their ability to establish liability. Furthermore, regardless of which party prevails after conclusion of this complex trial, appeal would be likely.

All of these considerations affect the likelihood of establishing liability and finality of the dispute, whereas the Settlement guarantees tangible and immediate benefits to the Class Members and a final disposition of the case. In light of these challenges, the Court should take into consideration Class Counsel's balancing of the risks and expense of continued litigation

against the benefits of settlement. *See In re Ikon II*, 209 F.R.D. at 108. In March 2011, the Court preliminarily determined that this "consideration weighs in favor of approving the settlement because the settlement will guarantee tangible and immediate benefit to the class members and a final disposition of the case, thereby putting aside these challenges." (Hrg. Tr., at 29.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

(5) *Girsh* Factor No. 5: The risk of establishing damages.

As the Court noted during the March 2011 hearing, this fifth *Girsh* factor does not apply to a (b)(2) class such as this. (*See* Hrg. Tr., at 29.)

(6) *Girsh* Factor No. 6: The risk of maintaining a class action.

"The sixth *Girsh* factor requires the Court to consider whether there is a significant risk that the class will not be maintainable through the course of the trial, and thus, there is a risk of class decertification." *Hawker*, 198 F.R.D. at 633. Based upon the facts of these Actions, there is no guarantee that the classes would remain certified throughout the balance of this litigation. DuPont contends that significant facts have developed since the time the Court considered class certification that could affect certification. (*See* Hrg. Tr., at 30-31.) Should litigation proceed, DuPont will maintain its defenses to class certification. (*See id.*) As such, this Court preliminarily determined in March 2011 that this factor weighs in favor of approving the Settlement. (*See id.*, at 31). *See also Dewey*, 728 F. Supp. 2d at 585 (finding that sixth *Girsh* factor weighed in favor of settlement approval where "there is no guarantee that the class would

be or would remain certified throughout future litigation"). Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

(7) *Girsh* Factor No. 7: The ability of the defendants to withstand a greater judgment.

As the Court acknowledged during the March 2011 hearing, the seventh *Girsh* factor is not relevant in these Actions, because the Class Claims in the Actions do not involve damage claims. (*See* Hrg. Tr., at 31).

(8)-(9) *Girsh* Factors No. 8 and 9:The range of reasonableness of the settlement in light of the best recovery, and the range of reasonableness of the settlement in light of all the attendant risks of litigation.

Finally, the Court must consider the range of the reasonableness of the Settlement in light of both the best possible recovery and the attendant risks of litigation. These factors are used to evaluate whether the Settlement "represents a good value for a weak case or a poor value for a strong case." *Dewey*, 728 F. Supp.2d at 586 (internal citations omitted). In its analysis, the Court should consider "whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial. *In re Prudential Ins. Co. of America Sales Practices Litigation*, 148 F.3d 283, 322 (3d Cir. 1998).

As discussed above, the Parties already have expended considerable time and resources on this litigation, and the investment that they will have to make to maintain these Actions going forward is significant. DuPont strongly contests both class certification and liability and is committed to defending the claims against it through the appellate courts if these Actions do not settle.

Furthermore, there is no doubt that the Settlement provides real, valuable and immediate benefits to the Class Members that are an adequate, fair, and reasonable compromise of their claims for injunctive relief, and which are essentially the injunctive relief sought through the Class Claims that the Court certified for injunctive relief, pursuant to Civil Rule 23(b)(2) . In addition, the Settlement is fair to Class Members, even though it does not provide all of the benefits that the Class Representatives initially sought in their lawsuits. *See Careccio v. BMW of North America LLC*, 2010 WL 1752347, *6 (April 29, 2010)(noting that "full compensation is not a prerequisite for a fair settlement"); *McGhee v. Continental Tire North America, Inc.*, 2009 WL 539893, *6-7 (D.N.J. March 4, 2009)(approving class settlement even though it did not provide full recovery, given the risks faced, the immediate benefits provided, and the absence of a guaranteed favorable verdict). When the certainty of the Class Benefits is weighed against the attendant risks and time involved in seeing this case through trial and through appeal, the proposed settlement appears more than reasonable. *See Varacallo*, 226 F.R.D. at 240 (finding settlement "yields substantial and immediate benefits, and it is reasonable in light of the best possible recovery and the attendant risks of litigation - little or no recovery at all"). Therefore, as this Court preliminarily determined during the March 2011 hearing, this factor weighs in favor of approving the Settlement as reasonable and in the best interest of the Class Members. (*See* Hrg. Tr., at 31-32). Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

C. THE CLASS BENEFITS PROGRAM IS A FAIR AND REASONABLE COMPROMISE OF THE CLASS CLAIMS FOR (B)(2) INJUNCTIVE RELIEF.

. While the Class Representatives allege and will endeavor to prove that PFOA levels in drinking water have created a nuisance that warrants abatement, DuPont strongly contests the

public and private nuisance claims and will defend the claims against it vigorously through trial and appeal, including any effort to require any form of treatment or filtering to reduce levels of PFOA in the Class Members' residential drinking water. The regulatory and scientific information relevant to these claims continues to evolve, and significant facts have changed since filing this suit. These factors, as well as more traditional legal uncertainty surrounding recovery in complex civil claims, weigh heavily in favor of the proposed Settlement, which provides certain relief now to Class Members.

Accordingly, Class Counsel and DuPont have negotiated a Class Settlement package with a total value of $8.3 million. The Filter Option that Class Member Households may elect under the terms of the Class Settlement Agreement is sufficiently related to the disputed Class Claims for injunctive relief to constitute a fair, adequate, and reasonable compromise of those claims, as certified under Civil Rule 23(b)(2). Through the Filter Option, each Class Member Household will be offered an identical water filter package selected by Class Counsel that includes: 1) an in-home water filter system[9]; 2) at least 10 replacement cartridges with a collective total expected service life of at least approximately 5 years (based on average water consumption/usage rates)[10]; 3) manufacturer's installation and operation instructions; 4) manufacturer's toll-free

[9] *See* Exhibits 2 and 3 to Preliminary Approval Motion, containing information concerning the Minnesota Department of Health study regarding the role that home filter systems may play in PFOA removal. (*Rowe* Doc, 503/*Scott* Doc. 440).

[10] The precise number of filters to be included in each package will depend on the total number of participating Class Member Households and the total amount of the Settlement Amount in the fund after deducting court-approved costs, fees, and expenses. Class Counsel contend that, according to currently-available information, the service life of the filter also may vary, ranging from approximately 6 months to one year per replacement cartridge, depending on water consumption/usage rates. (*See* Exhibit 1 to Preliminary Approval Motion (*Rowe* Doc. 503/*Scott* Doc. 440).

technical and customer service numbers; and 5) a check for at least $200 to cover the cost of any in-home water filter system installation services that may be desired.

The Parties recognize, however, that because of the nature of the benefit being provided and the length of time that the case has been pending, there may be Class Members who, for a variety of reasons, may prefer not to request the Filter Option. For example, a Class Member may feel that a filter is unnecessary or undesirable for any number of reasons - a Class Member may not like to drink tap water and may prefer bottled water, a Class Member may wish to select a filter other than the filter that Class Counsel have chosen for the Filter Option, or, given that information regarding the presence of PFOA in area water supplies has been available now for several years, a Class Member already may have a filter and may not want another one.[11] In an effort to address these types of situations while treating all Class Members fairly, the Parties have agreed that, under the Class Benefits program, each Class Member Household will be offered the option of choosing either the water filter package (i.e., the Filter Option), or a uniform incidental cash payment that will be of equivalent value to the Filter Option currently estimated at $800 (i.e., the Incidental Payment Option). The $800 Incidental Payment Option represents the approximate total value of the water filter package with 10 replacement cartridges.

The Incidental Payment Option does not interfere with the Court's Rule 23(b)(2) class certification, because the payments will be uniform and will require no individualized inquiry and, therefore, have no impact on the cohesiveness of the nuisance subclasses. The Third Circuit

[11] The Court has previously taken evidence that not every class member has altered his or her water consumption practices because of the PFOA levels found in either the public water supply or in private wells and that some members of the class already have home filtration units.

has not addressed the field of operation for incidental payments in a (b)(2) class in a published opinion;[12] however, the Third Circuit embraced the concept of incidental payments in *Barabin v. Aramark Corp.*, 2003 WL 355417 (3d Cir. Jan. 24, 2003). There the Third Circuit opined:

> Class actions certified under Rule 23(b)(2) are limited to those cases where the primary relief sought is injunctive or declaratory relief. At least two courts of appeals have devised a test for certification of a (b)(2) class. Under this test, where parties seek monetary relief, a court may only certify a class if the damages claim is incidental to the primary claim for injunctive or declaratory relief. We agree.
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> . . .
>
> Incidental damages are those 'that flow directly from liability to the class *as a whole* on the claims forming the basis of the injunctive or declaratory relief.' *Allison [v. Citgo Petroleum Corp.,* 151 F.3d 402, 415 (5th Cir.1998)](emphasis in original). Consistent with this analysis, whether damages are 'incidental' depends on: (1) whether such damages are of a kind to which class members would be automatically entitled; (2) whether such damages can be computed by 'objective standards' and not standards reliant upon 'the intangible, subjective differences of each class member's circumstances'; and (3) whether such damages would require additional hearings to determine. *See id.*

Id. at *1-2.[13] The Third Circuit concluded that the damages that the putative class members

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[12] *See Hohider v. United Parcel Service, Inc.*, 574 F.3d 169, 199, 202 (3d Cir. 2009)(noting in dicta that the court has "not yet spoken on how the predominance of monetary relief in the Rule 23(b)(2) context should be measured," and that "it was not sufficient for the [district] court simply to identify back pay as potentially incidental to [injunctive and declaratory] relief . . . it was necessary for the [district] court to determine whether plaintiffs' back-pay request actually conforms with the requirements of Rule 23, including Rule 23's monetary-predominance standard. And were the [district] court to find that such relief could go forward under Rule 23(b)(2), it would then need to address how that relief would be managed, specifying, for example, the methodology by which calculations and awards of relief would be made with respect to individual class members.").

[13] The *Allison* opinion states: "Monetary relief predominates in (b)(2) class actions unless it is incidental to requested injunctive or declaratory relief. *Accord Williams v. Owens-Illinois, Inc.*, 665 F.2d 918, 928-929 (9th Cir.), *cert. denied,* 459 U.S. 971, 103 S.Ct. 302, 74 L.Ed.2d 283 (1982). By incidental, we mean damages that flow directly from liability to the class *as a whole* on the claims forming the basis of the injunctive or declaratory relief ... Ideally, incidental damages should be only those to which class members automatically would be entitled once

sought were not incidental: "[i]n lieu of a claim for damages that automatically flow directly to the class as a whole, Plaintiffs aver that they have been 'damaged in an amount to be proven at trial.' This requires that evidence of the harm suffered by each plaintiff be produced for the jury's consideration at trial. We therefore conclude that the plaintiffs do not meet the criteria for class action certification under Rule 23(b)(2)." *Id.* at *2.

For years, New Jersey's district courts have followed *Allison.* In *Mulder v. PCS Health Systems, Inc.*, 216 F.R.D. 307 (D.N.J. 2003), the district court certified a (b)(2) class in which the class representatives sought to recover profits that an ERISA pharmaceutical benefits manager allegedly improperly obtained from its contracts with drug manufacturers. The court explained that, "[t]he fact that Mulder seeks disgorgement of illegal profits, however, does not mean that his request for relief is predominantly monetary . . . The monetary relief requested meets the *Allison* court's definition of incidental damages . . . [T]he illegal profits sought would flow from liability to the class as a whole on the claims that PCS breached its ERISA fiduciary duties - forming the basis for the requested injunctive and declaratory relief [and] [s]uch damages would be computable by objective standards, would not require individualized hearings, and would be a quintessential 'group remedy.'" *Id.* at 319. In contrast, in *Wilson v. County of Gloucester*, 256 F.R.D. 479 (D.N.J. 2009), the court decided that the class representatives' damages demands

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liability to the class (or subclass) as a whole is established [citations omitted]. That is, the recovery of incidental damages should typically be concomitant with, not merely consequential to, class-wide injunctive or declaratory relief ... Liability for incidental damages should not require additional hearings to resolve the disparate merits of each individual's case; it should neither introduce new and substantial legal or factual issues, nor entail complex individualized determinations. Thus, incidental damages will, by definition, be more in the nature of a group remedy, consistent with the forms of relief intended for (b)(2) class actions." *Allison,* 151 F.3d at 415 (emphasis supplied).

could not be characterized as incidental payments for purposes of (b)(2) class certification because damages could not be calculated without individual inquiries. *Id.* at 491 n. 19 (citing *Allison*).[14]

The district court in *Serio v. Wachovia Securities, LLC*, 2009 WL 900167 (D.N.J. March 31, 2009), gave final approval to a Rule 23(b)(2) class settlement that included incidental payments. The plaintiffs, former Wachovia employees, sought to recover wages that they contributed to ERISA plans. The proposed settlement provided that one group of class members would recover 4% of their wage contributions, another group would recover 3% of their wage contributions, and a third group of class members would recover $500. *Id.* at *2. The Court held that a (b)(2) settlement class was appropriate "because the basis for the suit is Wachovia's alleged failure to return certain deferred compensation plan contributions - a practice applicable to all Class members." *Id.* at *5. The method for calculating each class member's share of the total class consideration of $1,005,000.00 met *Allison*'s predominance/incidental benefit test because each class member's recovery was computed by "'objective standards' and not standards reliant upon 'the intangible, subjective differences of each class member's circumstances,'" and no additional hearings were necessary to determine each class member's recovery. *Barabin,*

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[14] *See also, Osgood v. Harrah's Entertainment, Inc.*, 202 F.R.D. 115 (D.N.J. 2001)(stating that Fifth Circuit's analysis of "the meaning of 'predominance' in the context of (b)(2) actions . . . has been widely followed," and holding that putative class members' damages claims were not incidental to their claims for injunctive relief because, "[e]ven if the members of the proposed class prove that the EEBOP affirmative action policy is illegal, each individual class member pursuing damages would still have to establish that his or her injury was caused by the EEBOP and . . . calculation of the amount of compensatory and/or punitive damages to which that individual would be entitled would necessarily be determined through a fact-specific inquiry as to the circumstances of that individual's employment or application for employment at Harrah's").

2003 WL 355417 at *2 (citing *Allision*).

As in *Serio*, the Incidental Payment Option is incidental to the injunctive relief that Class Representatives demanded in their complaints. The Incidental Payment is automatically available to Class Member Households; the payments do not "require additional hearings to resolve the disparate merits of each individual's case;" they do not "introduce new and substantial legal or factual issues;" and they do not "entail complex individualized determinations." Instead, the optional payments, in a single, fixed amount, are "more in the nature of a group remedy." *Allison*, 151 F.3d at 415. Moreover, under the terms of the revised proposed agreement, members of the Settlement Classes will release only their nuisance Class Claims for injunctive relief; they will not release existing damages claims.

Based on the foregoing, this Court preliminarily determined in March 2011 that the "incidental payment option is an incidental damage that flows directly from liability to the class as a whole on the claim that forms the basis of the injunctive relief," and, "for the reasons the parties have submitted … this is incidental to the injunctive relief." (Hrg. Tr., at 35-36.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

VII. THE CLASS NOTICE SATISFIES RULE 23(E) AND DUE PROCESS REQUIREMENTS

A. The Notice Satisfies All Applicable Standards for Approval of the Settlement

Fed.R.Civ.P. 23(e) requires that "notice of the proposed dismissal or compromise shall be

given to all members of the class in such manner as the court directs." Notice is complete and sufficient for purposes of Rule 23(e) of the Federal Rules of Civil Procedure if it allows class members "a full and fair opportunity to consider the proposed settlement and to develop a response." *Dunn & Bradstreet Credit Services*, 130 F.R.D. 366, 370 (S.D. Ohio 1990). A Rule 23(e) notice satisfies this standard if it describes the settlement sufficiently to offer class members an opportunity to present objections. *In re Agent Orange Prod. Liab. Litig.*, 597 F.Supp. 740, 759 (E.D.N.Y. 1984), *aff'd* 818 F.2d 145 (2d Cir. 1987). The notice need not attach a copy of the settlement agreement; a general description of the settlement terms will suffice. *Id.; Kaplan v. Chertoff*, 2008 WL 200108 (E.D.Pa. Jan 24, 2008)(approving notice of proposed class settlement that did not provide the full text of the release, but informed class members "that they release[d] all 'settled claims' against the defendants"). The notice must state the options open to dissenting class members. *In re Agent Orange Prod. Liab. Litig.*, 597 F.Supp. at 759. Notice should allow class members a reasonable time to object to the proposed settlement "to permit class members to investigate and reflect on the matter before taking a position." *Id*. Finally, the Court must remain neutral and express no opinion on the merits of the settlement. *Id.*

In reviewing whether the notice provided in a particular case meets the requirements of Rule 23(e) and due process, the Court must consider both the content of the Notice and the mode of dissemination. *In re The Prudential Ins. Co. of America Sales Practices Lit.*, 962 F. Supp 450 (D.N.J. 1997). Both the content and the means of distribution of the Notice in this case exceed

the minimum requirements of Rule 23 and due process. The individual notice[15] was drafted using the "plain language" guidelines and notice forms developed by the Federal Judicial Center for use in federal courts. (*See* Byrne Dec., Ex. 1 (Final Mailed Notice).) The Notice is simple, easy to understand and accurately summarizes the key elements of the settlement. The distribution plan included mailing of individual notice to all class members by U.S. Mail. The notice also provided a phone number for any class members who had questions regarding the settlement.

In addition to the Court-approved class Notice, Class Counsel also sent a subsequent class communication in order to provide further information to class members about the Filter Option program. (*See id.*, at Ex. 2.) As such, Class Members received not just one class notice, but two separate class communications. This additional form of notice provides an added layer of due process protections for Class Members. Consequently, during the March 2011 hearing, the Court approved the Notice Plan (and associated Class Notice) for dissemination to Class Members, finding that the "Class Notice … is appropriate under the circumstances and is reasonably calculated to inform Class Members of the proposed Settlement, affords Class Members an opportunity to present their objections to the Settlement or to exclude themselves from the Settlement, and complies in all respects with the requirements of Rule 23 and applicable due process requirements." (Order, at 4-5. *See also* Hrg. Tr., at 39.) The Court also ordered

[15] For 23(b)(2) classes, the Court does not have to order individual notice. Instead, the Court may exercise its discretion in selecting the means by which the parties must supply notice. *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 962-63 (3d Cir.1983)("Rule 23(e) makes some form of post-settlement notice ... mandatory, although the form of notice is discretionary ... [because] (b)(2) classes are cohesive in nature"). Nevertheless, Class Counsel opted to send out individual notice to Class Members. *Spring Garden United Neighbors, Inc. v. City of Philadelphia*, 1986 WL 1525, *2 (E.D.Pa. Feb. 4, 1986).

Class Counsel to implement the Notice Plan submitted to the Court, with Class Notice to be mailed by April 4, 2011. (Order, at 5.)

Class Counsel has fully and successfully implemented the Notice Plan approved by the Court in March. (*See* Byrne Dec., at ¶¶ 8-14.) In summary, individual notice was provided to 4248 Class Households, estimated to include approximately 10,000 individual Class Members. Class Counsel also mailed an additional class communication (letter) to these same Class Households concerning the proposed water filter benefit program; responded to Class Member questions about the Settlement, the class notice deadlines, and the opt-out form; prepared and mailed follow-up Notices and class counsel letters to newly-identified Class Member residences and/or addresses; compiled and reviewed opt-out forms submitted by Class Members (and, in some cases, non-class members); and, reviewed and researched class settlement objections submitted to the Court. (See, id.)

Finally, in compliance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. 1715(b), and the Court's Preliminary Approval Order, counsel for DuPont provided notice of the proposed Settlement to U.S. Attorney General Eric H. Holder, Jr. and the Commissioner of the New Jersey Department of Environmental Protection, Bob Martin. (*See* Affidavit of John Johnson, Exhibit F.)

If this settlement is finally approved Class Members will receive Claim Forms (through the Class Administrator), which each Class Household will be required to complete and return to the Class Administrator in order to receive the Class Benefits. (*See* Johnson Dec., Ex. D (Ex. 1 (Claim Form)). The Claim Form allows the Class Households to specify whether they desire to receive the Filter Option or the Incidental Benefits Option, as provided under the Settlement.

The Parties hereby jointly move the Court to appoint Mr. Gentle as the Class Administrator so that he may move forward with implementation of the claim process and distribution of Class Benefits promptly upon final approval of the Settlement.

B. Opt-Out Rights Were Provided to Class Members

The Parties agreed to extend opt out rights to Class Members and asked the Court to approve an opt-out option. In its Preliminary Approval Order, the Court exercised its discretion and provided Class Members with opt-out rights, even though such rights were not automatically required. (Order, at 6-7). *See Martens v. Smith Barney, Inc.***,** 181 F.R.D. 243 (S.D.N.Y. 1998); *In re Monumental Life Ins. Co.*, 365 F.3d 408, 417 (5th Cir. 2004). Of the 4248 notices that were mailed by Class Counsel, only 27 Class Members submitted timely opt-out notices - - less than 0.3% of the total estimated Class Members. (*See* Byrne Dec., Ex. 3.) As explained above, the fact that so few class members opted-out of the settlement is further evidence as to why this settlement should be approved.

IX. CONCLUSION

The proposed Settlement is fair, reasonable and adequate. Consequently, based upon the evidence presented and the analysis of applicable law, the Parties respectfully request that the Court find that all of the requirements of Rule 23(e) have been met and that the Settlement should be approved. The Parties further request that the Court enter a final judgment dismissing the Class Claims, with prejudice, consistent with the Settlement. The Parties also request that the Court enter an Order appointing Mr. Gentle as Class Administrator under the terms of the Settlement and the Class Administrator Agreement being tendered to the Court with these final approval papers.

May 24, 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, ET AL., individually and on behalf of themselves and all others similarly situated, **Plaintiffs,** **vs.** **E. I. DUPONT DE NEMOURS AND COMPANY,** **Defendant.**	**CIVIL ACTION NO.: 06-1810-RMB-AMD**
MISTY SCOTT, on behalf of herself and all others similarly situated, **Plaintiff,** **vs.** **E. I. DUPONT DE NEMOURS AND COMPANY,** **Defendant.**	**CIVIL ACTION NO.: 06-3080-RMB-AMD**

JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, APPOINTMENT OF CLASS ADMINISTRATOR, AND ENTRY OF FINAL JUDGMENT ON CLASS CLAIMS

I. INTRODUCTION

Richard A. Rowe, Michelle E. Tomarchio, Regina M. Trout, Allen K. Moore, Catherine A. Lawrence and Misty Scott, (collectively "Class Representatives") and Defendant E. I. du Pont de Nemours and Company ("DuPont") seek final approval under Federal Rule of Civil Procedure 23(e) of the proposed Settlement of the Class Claims in the above-referenced Actions.[1] The Parties also ask the Court to appoint a class administrator, and to enter final judgment on the Class Claims, pursuant to Federal Rule of Civil Procedure 54(b).

As indicated in the joint submission filed by the Parties on February 22, 2011, seeking preliminary approval of this Settlement (the "Preliminary Approval Papers")(*Rowe* Doc. 501/*Scott* Doc. 438), the Settlement provides that DuPont pay a total of $8,300,000.00, inclusive of class counsel attorneys' fees and expenses and settlement administration expenses. The Parties reached this proposed settlement after more than four years of litigation, multiple mediations and settlement conferences, and months of arms-length negotiation. The end result is a Settlement that is fair, adequate, and reasonable. Class Members will select one of two Class Benefits, either an in-home water filtration package (i.e., the Filter Option) or, for those who already have filters or otherwise do not want the offered Filter Option, an Incidental Payment Option of equivalent value. In exchange for the Class Benefits, the Class Members will resolve the common law nuisance claims for injunctive relief that the Court certified in its March 22, 2011, Amended Class Certification Order and will release DuPont only for those Class Claims in

[1] Capitalized terms shall have the meaning assigned in the Class Settlement Agreement (hereinafter "Settlement"), which was previously submitted to the Court on February 22, 2011. (*See Rowe* Doc. 501-3).

accordance with the terms of the Settlement Agreement, previously submitted to the Court with the Preliminary Approval Papers. (*See Rowe* Doc. 501-3.)

As preliminarily determined by the Court following the preliminary fairness hearing on March 22, 2011, and for the reasons reiterated below, the proposed Settlement represents a fair and adequate, tangible, and certain result for the Class Members. (*See* Preliminary Approval Order (*Rowe* Doc. 508/*Scott* Doc. 445) (the "Order"), at 3-4. *See also* March 22, 2011, Preliminary Fairness Hearing Transcript (*Rowe* Doc. 509) ("Hrg. Tr."), at 25-40 (attached as Ex. A to the Declaration of John M. Johnson in Support of the Parties' Joint Motion for Final Approval of Class Action Settlement, Appointment of Class Administrator, and Entry of Final Judgment on Class Claims ("Johnson Dec.").) The Class Representatives fully support Court approval of the Settlement. (*See* Johnson Dec., at Ex. B (copies of each named class representative's agreement to participate in settlement).)

As explained below, since the Court preliminarily approved the Settlement, the Court-approved Class Notice (dated April 4, 2011) has been sent to the Class Members in compliance with the approved Notice Plan, disclosing the terms of the Settlement and providing both opt-out and objection opportunities. (*See* Declaration of David B. Byrne, III, in Support of Parties' Joint Motion for Final Approval of Class Action Settlement, Appointment of Class Administrator, and Entry of Final Judgment ("Byrne Dec."), at ¶¶ 7-14.) Of the thousands of Class Members receiving Notice, only 27 individual Class Members (less than 0.3 % of the total estimated) chose to opt-out and none of the Class Members[2] expressed any reservations about the terms of the Settlement. (*See id.*, at ¶¶ 12 & 18, Ex. 3 (Class Member opt-out list – filed under seal).)

[2] *See* Section B(2) below. Although Class Counsel received three objection letters, (*see* Byrne Dec., at Ex.5 – filed under seal), none of them were lodged by Class Members.

This implementation of the Court's approved Notice Plan, the low number of opt-outs, and absence of Class Member objectors further support final approval of the Settlement, which the Court preliminarily found to be "fair, just, reasonable, valid, and adequate," subject to any objections received through implementation of the Notice Plan. (Order, at 3.)

As noted by the Court during the preliminary fairness hearing, the Court's obligation under Rule 23(e) is to determine if the Settlement is "fair, reasonable and adequate." (Hrg. Tr., at 25.) *See also* Fed. R. Civ. P 23(e). The Third Circuit has identified nine factors often referred to as the "*Girsh* factors" to guide this inquiry: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. (Hrg. Tr. at 26 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)). *See also In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 785-86 (3d Cir.1995). During the preliminary fairness hearing in March, the Court carefully and thoroughly reviewed the Settlement in connection with each of these nine factors, other than the reaction of the class, which was not possible to assess at that time. (*See* Hrg. Tr., at 26-32.) The Court also thoroughly evaluated the Settlement in terms of several additional factors known as the "*Prudential* factors," including the maturity of the underlying issues, the development of scientific knowledge, the extent of discovery on the merits, the ability to assess the probable outcome at trial, and whether opt-out rights are provided. (*Id.*, at 32-34 (citing *In re Prudential*,

148 F.3d at 323.)) The Court preliminarily determined that each of these *Girsh* and *Prudential* factors supported approval of the Settlement, subject to whatever objections might be raised by Class Members through implementation of the Notice Plan. (*Id.*, at 40; Order, at 3-4.) Now that the Notice Plan has been implemented and Class Members have been provided the opportunity to react to the Settlement, the Parties seek final approval of the Settlement under Rule 23(e). A proposed final order and judgment (the "Final Order") consistent with the Parties' agreement is included with the Johnson Dec. as Ex. C.

In connection with final approval of the Settlement, the Parties also hereby jointly seek formal appointment of Edgar C. Gentle, III, as Class Administrator for the Settlement, pursuant to the Class Administrator Agreement entered between the Parties and Mr. Gentle (the "Administrator Agreement"), (s*ee* Johnson Dec., at Ex. D), and the Settlement terms. The Parties agree that Mr. Gentle has the proper qualifications and experience to implement the terms of the Settlement and Administrator Agreement with respect to distribution of the Settlement Amount and Class Benefits, (*see id.*, at Ex. E), and Mr. Gentle has consented to such appointment and to discharge such duties as required under the Settlement and Administrator Agreement. (*See id*., at Ex. D.) The Parties, therefore, jointly move the Court to appoint Mr. Gentle as Class Administrator, and have included the appropriate language in the proposed Final Order for the Court.

II. PROCEDURAL HISTORY

A. Background of the Lawsuits

1. The *Rowe* Action.

On April 18, 2006, the *Rowe* plaintiffs filed a class action lawsuit against DuPont. They alleged that their drinking water contained PFCs, including ammonium perfluorooctanoate ("PFOA"), a substance that purportedly came from DuPont's Chambers Works facility in Salem County, New Jersey. For their class claims, the *Rowe* plaintiffs requested equitable and injunctive relief pursuant to Federal Rule of Civil Procedure 23(b)(2); they did not seek personal injury or property damages on behalf of the proposed class.[3]

The *Rowe* plaintiffs initially moved for class certification of their injunctive and equitable claims in 2008. After several rounds of briefing, the Court ultimately certified only the private nuisance claim for class treatment and denied certification of any other claims or issues. In its October 9, 2009, Opinion, the Court certified the following Rule 23(b)(2) private nuisance subclass:

> All individuals who, as of the date of this Opinion, have an ownership interest in a private well within a two-mile radius of DuPont's Chambers Works plant, which supplies drinking water containing PFOA.

On February 22, 2011, the Parties jointly moved to amend the class certification order to slightly modify the private nuisance class definition to be as follows:

> Any individual who as of the date of Class Notice of the Settlement has an ownership interest (meaning owns or leases)

[3] The *Rowe* plaintiffs assert individual claims for compensatory damages, however. The Named Plaintiffs are settling their individual, non-class claims separately.

> in and occupies a residence located within two miles of the Chambers Works Plant that has a private well for drinking water that contains PFOA.

(*Rowe* Doc. 502-1, at 6.) The Court granted the joint Motion on March 22, 2011, to amend the Rule 23(b)(2) private nuisance class definition, as requested by the Parties. (*See* Order, at 3; Hrg. Tr., at 36-38.)

2. The *Scott* Action.

The *Scott* action was filed on June 14, 2006, in Salem County Superior Court. DuPont removed the action to this Court on July 7, 2006. As with the *Rowe* case, the *Scott* case was filed as a putative class action for equitable and injunctive relief from allegedly excessive levels of PFOA in drinking water. After several rounds of briefing, the Court certified only the following 23(b)(2) public nuisance subclass in its October 9, 2009, Opinion:

> All individuals who, as of the date of this Opinion, are residential water customers of PGWS that have an ownership interest (meaning own or lease) in their real property served by PGWS, which supplies drinking water containing PFOA.

The Court also certified the following strict liability issue for class treatment pursuant to Rule 23(c)(4):

> Whether DuPont's release of PFOA constitutes an 'abnormally dangerous activity.'[4]

On February 22, 2011, the Parties jointly moved the Court to amend the class certification order in the *Scott* case to allow for a slight modification of the public nuisance class definition and to decertify the strict liability issue. (*Scott* Docket No. 439). With respect to the Rule 23(b)(2) public nuisance class, the Parties jointly requested that the definition be modified

[4] As with the *Rowe* plaintiffs, Ms. Scott has asserted separate, individual claims for relief that she is settling separately.

to read as follows:

> Any individual who as of the date of Class Notice of the Settlement has an ownership interest (meaning owns or leases) in and occupies a residence with drinking water supplied by the Penns Grove Water System.

(*Id.*, at 6.) Order, at 3. On March 22, 2011, the Court granted the Parties joint motion to modify the public nuisance class definition and to decertify the strict liability nuisance issue class. (Order, at 3; Hrg. Tr., at 36-38.)

As such, the only claims being resolved by this Settlement are the public and private common law nuisance claims for injunctive relief of those individuals who *both* have an ownership interest in (meaning owns or leases) *and occupy* the properties at issue as of the date Class Notice was issued on April 4, 2011.

B. The Litigation

As detailed in the Parties' Preliminary Approval Papers, and as noted by the Court during the March 22, 2011, preliminary approval hearing, the Parties have litigated the toxic tort claims in the "very complex" *Rowe* and *Scott* cases for more than four years. (Hrg. Tr., at 26-28.) The Parties have engaged in extensive discovery and motion practice. More than three million pages of documents were exchanged; over fifty depositions were taken across the country; and dozens of interrogatories, requests for production, and requests for admission were propounded and answered. In addition, in support of their claims or defenses, the Parties identified more than two dozen expert witnesses in numerous disciplines ranging from toxicology to epidemiology to chemical fate and transport. (*Id.*)

DuPont moved for summary judgment on the Class Claims and individual claims and

moved to exclude many of the Class Representatives' expert witnesses. Likewise, the *Rowe* Plaintiffs moved for summary judgment on one of their individual claims for injunctive relief, and the Class Representatives filed multiple *Daubert* motions.

On December 13, 2010, the parties filed a motion for preliminary approval of an earlier, proposed class settlement. (*Rowe* Doc. 492/*Scott* Doc. 430.) On December 16, 2010, the Court conducted a hearing to consider that motion for preliminary approval and denied the motion with instructions to the Parties to revisit the proposed settlement terms. (*Rowe* Doc. 496/*Scott* Doc. 434.) Following the December 16 hearing, the Parties continued to discuss settlement in light of the Court's ruling and were eventually able to reach agreement on a revised settlement. The parties filed a second motion for preliminary approval (this time for the current Settlement before the Court) on February 22, 2011. (*Rowe* Doc. 501/*Scott* Doc. 438.) The Court held a hearing on the revised class action settlement and entered an Order preliminarily approving it on March 22, 2011. (*See* Order.) The Order directed counsel to comply with certain deadlines set forth in the Order, including implementation of a court-approved Class Notice Plan providing opportunity for opt-outs and objections, and set a final fairness hearing for June 14, 2011. (*See id.*) As set out below, the parties have completed implementation of the Notice Plan approved in the Preliminary Approval Order, and the Settlement is now ripe for final review and approval, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

III. THE PROPOSED RELIEF

The Settlement will resolve only the nuisance Class Claims for injunctive relief. In exchange for the Class Benefits that DuPont will fund in compromise of the Class Claims, the Class Representatives and the Class Members will release DuPont from liability, without any

admission of wrongdoing, with respect only to the Class Claims, in accordance with the terms of the release set forth in the Settlement Agreement. The total Settlement Amount of $8,300,000.00 will be used to fund a Class Benefits program under which Class Members will select either an in-home water filtration package (i.e., the Filter Option) or, for those who already have filters or otherwise do not want the Filter Option, an Incidental Payment Option of equivalent value. The Class Benefits program was explained in more detail in the various Preliminary Approval Papers and submissions from the Parties on February 22, 2011, supplemental materials filed in support of such preliminary approval, and during the preliminary approval hearing on March 22, 2011. As noted by counsel during the March hearing, the Parties have also selected an experienced and qualified individual to serve as Class Administrator under the Settlement, who will be responsible for distributing the Class Benefits in a manner consistent with the Settlement terms. (*See* Hrg. Tr. 11-12.)

DuPont also has agreed not to object to a reasonable application by Class Counsel for fees and expenses, with the understanding that any award approved by the Court would come from the Settlement Amount. The Parties believe that the benefits offered to the Class Members from the proposed settlement of their Class Claims for injunctive relief meet or exceed the benefits from continued litigation.

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Standards for Final Approval of Class Settlement

The Parties believe that the Settlement is fair, reasonable, adequate, and worthy of final judicial approval. The public interest favors settling litigation, particularly class actions.

Ehrheart v. Verizon Wireless, 609 F.3d 590, 592 (3d Cir. 2010)("a strong public policy exists, which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation"); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3d Cir.)("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation"), *cert. denied*, 516 U.S. 824 (1995). Settlement of complex class actions minimizes the parties' litigation expenses and reduces the strain such litigation imposes on scarce judicial resources. *Ehrheart*, 609 F.3d at 595. ("Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts. In addition to the conservation of judicial resources, the parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial"). *See also* Hrg. Tr., at 25.

"In deciding whether to approve a settlement, the court must carefully balance two competing interests: 'On the one hand, the Court must scrupulously ensure that the proposed settlement is in the best interests of class members by reference to the best possible outcome. On the other hand, the court must not hold counsel to an impossible standard, as settlement is virtually always a compromise.'" *Hawker v. Consovoy*, 198 F.R.D. 619, 627 (D.N.J. 2001). While Rule 23 requires courts to "act as fiduciaries for the absent class members, [it] does not vest [the Court] with broad powers to intrude upon the parties' bargain." *Ehrheart*, 609 F.3d at 592.

"After the parties reach a class action settlement, the court should approve the settlement if it is 'fair, reasonable and adequate.'" *Hawker*, 198 F.R.D. at 627; *see also Ehrheart*, 609 F.3d

at 592 ("a district court determines whether the settlement is fundamentally fair, reasonable, and adequate"); Hrg. Tr., at 25.

> The Third Circuit has adopted a nine-factor test to help district courts structure their final decisions to approve settlements as fair, reasonable, and adequate as required by Rule 23(e). 'Those factors are: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.' *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 785-86 (3d Cir.1995).

Yong Soon Oh v. AT & T Corp., 225 F.R.D. 142, 145 (D.N.J. 2004). Courts often refer to these as the *Girsh* factors because the Third Circuit announced them in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1957). (*See* Hrg. Tr., at 26.) The fifth and seventh factors do not apply in these Actions because the plaintiff classes do not seek compensatory damages. *Hawker*, 198 F.R.D. at 632 & n. 17; Hrg. Tr., at 29 and 31 (Court notes fifth and seventh factors not relevant here).[5]

At this final stage of the settlement approval process, the Court makes a determination of the fairness of the proposed settlement on the basis of written submissions and presentations

[5] In addition to the *Girsh* factors, "district courts should also consider other potentially relevant and appropriate factors, including, among others: 'the maturity of the underlying substantive issues, as measured by the experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved-or likely to be achieved-for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable." *Dewey v. Volkswagen of America*, 728 F. Supp. 2d 546, 573 (D.N.J. July 30, 2010)(quoting *In re AT & T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006)). During the preliminary approval hearing in March, this Court carefully reviewed each of these additional factors and found that they supported approval of the settlement. (*See* Hrg. Tr., at 32-34.)

from the settling parties. Fed.R.Civ.P. 23(e); Manual for Complex Litigation, § 21.634 (4th ed. 2004)("At the fairness hearing, the proponents of the settlement must show that the proposed settlement is 'fair, reasonable and adequate.'"); *In re General Motors Corp*., 55 F.3d 768, 785 (3d Cir. 1995); *Hall v. AT&T*, 2010 WL 4053547 at *6 (D.N.J. 2010)("Under Rule 23, a court may only approve a class settlement after it has held a hearing and determined that the settlement is 'fair, reasonable and adequate.'").

B. Application of the Girsh Factors

On March 22, 2011, this Court carefully evaluated the Settlement pursuant to the Third Circuit's nine-factor *Girsh* fairness test (and under the additional *Prudential* factors), and preliminarily determined that the Parties' proposed Settlement is fair, reasonable, and adequate. (*See* Order, at 3; Hrg. Tr., at 25-40). At that point, the only relevant factor that the Court could not evaluate was the reaction of the Class Members to the Settlement. (*See* Hrg. Tr., at 27.) The Court correctly noted that such Class Member reaction could not be evaluated until "after the class members have received notice and an opportunity to object or opt-out." (*Id.*) Now that the Class Notice Plan has been implemented and Class Members have received the Class Notice and right to object or opt-out, the Court can assess this last factor. As explained below, the favorable reaction of the Class Members to the Settlement further supports and strengthens the Court's preliminary determination that the Settlement should be approved. *See, e.g., Hall,* 2010 WL 4053547 at *7 (citing *In re Warfarin Antitrust Litig.,* 391 F.3d 516, 535 (3d Cir. 2004)) ("[a] presumption of fairness exists where a settlement has been negotiated at arm's length, discovery was sufficient, the settlement proponents are experienced in similar matters, and there are few objectors.")

(1) *Girsh* Factor No. 1: The complexity and duration of the litigation.

Complex scientific and legal issues pervade this litigation. For example, the Parties have collectively presented opinions from nearly two dozen experts in a variety of disciplines ranging from toxicology to epidemiology to chemical fate and transport. This litigation is not only complex but lengthy, spanning more than four years so far. It will continue for many months to come, if not longer, if the case does not settle. The complexity and expense of ongoing litigation is significant. The Parties have filed numerous motions for summary judgment and motions to exclude expert witnesses, which were not resolved prior to reaching this settlement agreement. Those motions are based on evidence gleaned from three million pages of documents, more than 50 depositions, and dozens of discovery responses. Further litigation, potentially including appeals to the Third Circuit, will be time consuming, expensive, and difficult. *Dewey v. Volkswagen of America*, 728 F.Supp.2d 546 (D.N.J. 2010)(finding that proposed class settlement satisfied *Girsh* factors where litigation had been underway for more than two years; fact discovery which included "more than fifty depositions throughout the United States, the exchange of thousands of documents, some of which were in a foreign language, and consultation with numerous automotive experts" was to end in two weeks; discovery materials allowed class counsel to assess both the factual and legal strengths and weaknesses of their case and engage in arms-length negotiations; and "even if the class were certified and succeeded at trial, class counsel astutely recognize that the defendants would likely appeal."). Based on these various facts, this Court preliminarily determined on March 22, 2011, that "this factor favors preliminary approval of the settlement." (Hrg. Tr., at 26-27.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the

Settlement.

(2) *Girsh* Factor No. 2: The reaction of the class to the settlement.

Courts within the Third Circuit typically consider the number of objectors and opt-outs as an indication of the reaction of the class to the proposed settlement. *See, e.g., In re CertainTeed Corp. Roofing Shingle Prod. Liab. Lit.*, 269 F.R.D. 468, 485 (E.D. Pa. 2010); *In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Lit*, 263 F.R.D. 226, 239 (E.D.Pa. 2009). Approval is favored where the number or percentage of objectors is small in comparison to the number of class members as a whole. *Id.*, (citing *Varacallo v. Mass. Mut. Life Ins. Co*., 226 F.R.D. 207, 251 (D.N.J. 2005)(because only .06% of the class members opted out of the settlement, this factor favored approval); *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1313-1314 (3d Cir. 1993)(small number of objectors does not favor derailing settlement)). *See also Dewey*, 728 F. Supp.2d at 601 ("less than 1% of the class" objecting or opting out is an "extraordinarily low percentage of class members voicing dissatisfaction" and "shows that the supermajority of the class consents to the settlement"); *Hall*, 2010 WL 4053547 at *8 ("Generally, 'silence constitutes tacit consent to the agreement.'" (citing *In re General Motors*, 55 F.3d at 812.))

Here, Class Counsel mailed the Court-approved Class Notice to approximately 4250 Class Households in which approximately 10,000 estimated Class Members reside, notifying the Class Members of the Settlement terms and their right to object or opt-out. (*See* Byrne Dec., at ¶ 12.) Only 27 individual Class Members[6] (representing less than 0.3% of the total estimated

[6] Among the 27 opt-outs were 5 individuals who identified themselves as current and/or former employees of DuPont. (Byrne Dec., at Ex. 3 – filed under seal.). Although additional purported "opt-outs" were submitted to Class Counsel and the Court on May 12, 2011, those forms were submitted after the Court-ordered deadline of May 9, 2011, and are thus not properly before the Court.

Class members) timely excluded themselves from the Settlement by opting out, and only four persons (only approximately 0.04% of the total estimated Class Members) timely purported to express any reservations about the terms of the settlement. (*See id.*, Exs. 3 and 5 – filed under seal.) None of the four timely, purported objectors, however, are even members of the Class with standing to object. *See Sowers v. Freightcar America, Inc.*, 2008 WL 4949039 at *1 (W.D. Pa. 2008)("Only parties to the civil action have standing to object absent extraordinary circumstances"). One purported objector (Penns Grove Associates) is not an "individual," as required in the Class definitions, but a business entity. (*See* Byrne Dec., at Ex. 5 – filed under seal.) Three of the purported objectors (Penns Grove Associates, Samuel Switzenbaum, and Kenneth W. Jordan) also lack standing to object because, although they claim to own the real property at issue (all three purport to be property owners/landlords), they do not also *occupy or* reside in the property, which is expressly required by the Class definitions in order to be a Class Member. (*See id*.) Moreover, even if these persons were proper Class Members with standing to object, the substance of their objections go to alleged impact on property values or other compensatory damage-type claims that are not resolved or released by this class Settlement and are, therefore, irrelevant to a proper evaluation of the fairness and adequacy of this Settlement, which only resolves the class nuisance claims for injunctive relief. Finally, several of these same purported "objectors" (Penns Grove Associates, Sam Switzenbaum, and ShaKai L. Ellis) have also chosen to "opt-out" of the Settlement by submitting opt-out forms and thus no longer have any standing to pursue objections to the Settlement they have opted out of. *See* 4 Newberg on Class Actions § 14.41, n.10 (4th Ed)(nonparties to a settlement generally do not have standing to object). The specific objections and opt-outs are discussed in more detail below.

One of the objections received by the Parties was in a letter dated May 9, 2011, from Kenneth W. Jordan of Carney's Point, NJ. (*See* Byrne Dec., Ex. 5 – filed under seal.) Mr. Jordan confirms in his letter that he does not actually reside in the Class area but learned about the Settlement from a neighbor. Apparently, Mr. Jordan owns a building within the Class area in which other individuals actually occupy the property at issue as "tenants" (none of which are actually objecting to any aspect of the Settlement). (*See id.*) Thus, because he does not both own and occupy the property at issue, he is not a proper Class Member and, as discussed above, has no standing to assert any objections to the Settlement. *See Morlan v. Univ. Guar. Life Ins. Co.*, 2003 WL 22764868 at * 2 (S.D. Ill. 2003)(unpublished opinion)(objector is not a class member and therefore lacks standing to object to the settlement agreement). Moreover, because he is not a Class Member, Mr. Jordan is not compromising any of his individual claims by virtue of this Settlement of only the Class Members' Class Claims. Thus, even if the Court were to consider the substance of Mr. Jordan's concerns relating to his desire to "reserve [his] property rights" and to not be barred from any potential pursuit of his own "future water quality remediation from DuPont," Mr. Jordan is not a Class Member and thus gives up nothing with respect to any of his rights or future claims if this Settlement is approved. For these reasons, Mr. Jordan's "objection" should not be considered as a basis upon which to reject final approval of any aspect of the Settlement.

Another purported "objection" letter (also dated May 9, 2011), was received by the Parties from counsel for Samuel Switzenbaum (an individual) and Penns Grove Associates (a business entity). (*See id.*) Like Mr. Jordan, however, Mr. Switzenbaum also does not live in the Class area or occupy a residence in the Class area. Both he (and Penns Grove Associates) are

purported owners/landlords for rental property in Penns Grove. Thus, like Mr. Jordan, neither Mr. Switzenbaum nor Penns Grove Associates is a Class Member with standing to assert any objections to any aspect of the Settlement.[7] *See Morlan*, 2003 WL 22764868 at * 2. Moreover, like Mr. Jordan, because neither Mr. Switzenbaum nor Penns Grove Associates is a Class Member, neither is in any way bound by any aspect of the Class Settlement, and neither is releasing or in any way compromising individual claims or rights, whatever they may be. Even if Mr. Switzenbaum or Penns Grove Associates could somehow be viewed as Class Members, (which, based on their own submissions and this Court's Orders, they are not), neither would have standing to assert any objections, because both submitted opt-out forms through their counsel. (*See* Byrne Dec., at Ex. 4 – filed under seal.) Consequently, neither Mr. Switzenbaum nor Penns Grove Associates has any standing to assert any objections, thus their "objections" cannot serve as a basis for disapproving any aspect of the Settlement. *See Morlan*, 2003 WL 22764868 at *2.

The final objection letter received by the Parties was from ShaKai L. Ellis. (*See* Byrne Dec., Ex. 5 - filed under seal.) In her May 9, 2011 letter, Ms. Ellis expresses certain concerns about the proposed Settlement but fails to note that, in response to those concerns, Ms. Ellis properly availed herself of the option of opting out of the entire Settlement, thereby preserving

[7] On May 12, 2011, after the court-ordered objection deadline, Counsel for Mr. Switzenbaum and Penns Grove Associates also submitted a letter to Class Counsel purporting to join two new persons, Ron Keller and Sheila Uhrick, to the earlier-served objections of Mr. Switzenbaum and Penns Grove Associates. (*See* Byrne Dec., Ex. 5 – filed under seal.) Not only was that attempt to object untimely under the Court's Order, but the late letter also failed to comply with the Court's Order to specify whether the purported objectors are current or former employees, agents, or contractors of DuPont and whether they actually intended to appear at the final fairness hearing. (*See* Order, at ¶ 8.) Thus, the purported objections of Mr. Keller and Ms. Uhrick are both untimely and invalid.

her right to pursue all of her own claims, including any of the nuisance claims for injunctive relief being resolved under the Settlement, and thereby mooted her "objections" to the Settlement, as she is no longer a Class Member. (*See* Byrne Dec., at Ex. 3 – filed under seal (Ellis opt-out form, dated May 6, 2011)). *See* Manual Complex Lit. § 21.643 (4th Ed)("A class member who does not opt out may object to a settlement."); *Mayfield v. Barr*, 985 F. 2d 1090, 1092 (D.C. Cir. 1993) (standing required to challenge class action settlement). *See also In re Vitamins Antitrust Class Actions*, 215 F.3d 26, 29 (D.C.Cir.2000) ("'[T]hose who fully preserve their legal rights cannot challenge an order approving an agreement resolving the legal rights of others.'")(quoting *Mayfield*, 985 F. 2d at 1093)); *In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1102 (10th Cir. 2001) ("Non-settling defendants generally have no standing to complain about a settlement, since they are not members of the settling class." (quotation omitted)). Because Ms. Ellis opted out of the Settlement and is no longer a Class Member, the "objections" set forth in her letter cannot serve as a basis for rejecting final approval of any aspect of the Settlement.8

In summary, although three objection letters were received by Class Counsel, none of them was submitted by actual Class Members. In other words, not a single Class Member

[8] Even if Ms. Ellis' concerns were properly before the Court, the substance of her concerns could not impact approval of the Settlement. More specifically, Ms. Ellis complains about the impact of the Settlement on potential future personal injury/health claims and property values. (*See* Byrne Dec., Ex. 5 – filed under seal) Yet, as explained above, this Settlement does not resolve or release any such personal injury or property damage claims. Ms. Ellis also complains that the Settlement does not provide enough water filters or replacement cartridges but Ms. Ellis fails to identify what number of filters or cartridges she believes would be adequate, and fails to acknowledge that the Settlement expressly provides that more than 10 replacement cartridges may in fact be provided, depending on the total number of participating Class Households. Ms. Ellis' concern about the alleged lack of information on potential health risks from PFOA in the water is also misguided as the Class Counsel sent letters to Class Members providing a link to information made available by the Minnesota Department of Health on such topics. (*See* Byrne Dec., Ex. 2.)

objected to any aspect of this Settlement. The Class Representatives in these Actions made the decision to obtain meaningful class-wide relief on behalf of the Class Members. (*See* Johnson Dec., Ex. B) The settlement decision by the Class Representatives is clearly supported by the small number of opt-outs, the lack of objections by Class Members, and the Class's positive reaction to the Settlement.

(3) *Girsh* Factor No. 3: The stage of the proceedings.

The third *Girsh* factor requires the Court to consider the stage of the proceedings and the amount of discovery that has been completed. This factor "captures the degree of case development that class counsel have accomplished prior to settlement." *In re Cendant*, 264 F.3d 201, 235 (3d Cir. 2001) (quoting *In re Gen. Motors*, 55 F.3d at 813). This allows a Court to "determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Gen. Motors*, 55 F.3d at 813.

The Class Representatives and Class Members are represented by experienced Class Counsel who have thoroughly evaluated the likelihood that the Class Claims will succeed on the merits. Because discovery is closed and the Parties have fully briefed dispositive motions, Class Counsel are well-positioned to evaluate the likelihood of success, should this litigation proceed. DuPont is also represented by experienced counsel who understands the time and expense that continued litigation, trial and appeal would require in this complex case. Given that each Party has had the opportunity to evaluate these issues with experienced counsel, this factor weighs in favor of approving the settlement. *Dewey*, 728 F. Supp. 2d at 572 ("Experienced class counsel's approval is entitled to considerable weight and favors finding that the settlement is fair."); *Cohen v. Chilcott*, 522 F. Supp. 2d 105, 118 (D.D.C. 2001)(finding that after review of one million

documents, twenty depositions, and exchange of expert reports, parties had sufficient information to assess the risks of litigation vis-à-vis the probability of success and range of recovery).

Based on the foregoing, this Court preliminarily determined in March 2011 that "[t]here can be no question, given the extent of this litigation, that counsel have clearly had more than an adequate opportunity to appreciate the merits of the case." (Hrg. Tr., at 28.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

(4) *Girsh* Factor No. 4: The risk of establishing liability.

DuPont vigorously disputes liability in these cases, has moved for summary judgment on all counts, has moved to exclude the opinions and testimony of plaintiffs' key experts, and has challenged the basis for certification of certain claims. As such, the Class Representatives face significant and potentially meritorious defenses based on the facts and the law, if the cases proceed to trial. Because the Court has not yet ruled on any of the dispositive or expert motions, the Class Representatives face considerable risks as to their ability to establish liability. Furthermore, regardless of which party prevails after conclusion of this complex trial, appeal would be likely.

All of these considerations affect the likelihood of establishing liability and finality of the dispute, whereas the Settlement guarantees tangible and immediate benefits to the Class Members and a final disposition of the case. In light of these challenges, the Court should take into consideration Class Counsel's balancing of the risks and expense of continued litigation

against the benefits of settlement. *See In re Ikon II*, 209 F.R.D. at 108. In March 2011, the Court preliminarily determined that this "consideration weighs in favor of approving the settlement because the settlement will guarantee tangible and immediate benefit to the class members and a final disposition of the case, thereby putting aside these challenges." (Hrg. Tr., at 29.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

(5) *Girsh* Factor No. 5: The risk of establishing damages.

As the Court noted during the March 2011 hearing, this fifth *Girsh* factor does not apply to a (b)(2) class such as this. (*See* Hrg. Tr., at 29.)

(6) *Girsh* Factor No. 6: The risk of maintaining a class action.

"The sixth *Girsh* factor requires the Court to consider whether there is a significant risk that the class will not be maintainable through the course of the trial, and thus, there is a risk of class decertification." *Hawker*, 198 F.R.D. at 633. Based upon the facts of these Actions, there is no guarantee that the classes would remain certified throughout the balance of this litigation. DuPont contends that significant facts have developed since the time the Court considered class certification that could affect certification. (*See* Hrg. Tr., at 30-31.) Should litigation proceed, DuPont will maintain its defenses to class certification. (*See id.*) As such, this Court preliminarily determined in March 2011 that this factor weighs in favor of approving the Settlement. (*See id.*, at 31). *See also Dewey*, 728 F. Supp. 2d at 585 (finding that sixth *Girsh* factor weighed in favor of settlement approval where "there is no guarantee that the class would

be or would remain certified throughout future litigation"). Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

(7) *Girsh* Factor No. 7: The ability of the defendants to withstand a greater judgment.

As the Court acknowledged during the March 2011 hearing, the seventh *Girsh* factor is not relevant in these Actions, because the Class Claims in the Actions do not involve damage claims. (*See* Hrg. Tr., at 31).

(8)-(9) *Girsh* Factors No. 8 and 9:The range of reasonableness of the settlement in light of the best recovery, and the range of reasonableness of the settlement in light of all the attendant risks of litigation.

Finally, the Court must consider the range of the reasonableness of the Settlement in light of both the best possible recovery and the attendant risks of litigation. These factors are used to evaluate whether the Settlement "represents a good value for a weak case or a poor value for a strong case." *Dewey*, 728 F. Supp.2d at 586 (internal citations omitted). In its analysis, the Court should consider "whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial. *In re Prudential Ins. Co. of America Sales Practices Litigation*, 148 F.3d 283, 322 (3d Cir. 1998).

As discussed above, the Parties already have expended considerable time and resources on this litigation, and the investment that they will have to make to maintain these Actions going forward is significant. DuPont strongly contests both class certification and liability and is committed to defending the claims against it through the appellate courts if these Actions do not settle.

Furthermore, there is no doubt that the Settlement provides real, valuable and immediate benefits to the Class Members that are an adequate, fair, and reasonable compromise of their claims for injunctive relief, and which are essentially the injunctive relief sought through the Class Claims that the Court certified for injunctive relief, pursuant to Civil Rule 23(b)(2) . In addition, the Settlement is fair to Class Members, even though it does not provide all of the benefits that the Class Representatives initially sought in their lawsuits. *See Careccio v. BMW of North America LLC*, 2010 WL 1752347, *6 (April 29, 2010)(noting that "full compensation is not a prerequisite for a fair settlement"); *McGhee v. Continental Tire North America, Inc.*, 2009 WL 539893, *6-7 (D.N.J. March 4, 2009)(approving class settlement even though it did not provide full recovery, given the risks faced, the immediate benefits provided, and the absence of a guaranteed favorable verdict). When the certainty of the Class Benefits is weighed against the attendant risks and time involved in seeing this case through trial and through appeal, the proposed settlement appears more than reasonable. *See Varacallo*, 226 F.R.D. at 240 (finding settlement "yields substantial and immediate benefits, and it is reasonable in light of the best possible recovery and the attendant risks of litigation - little or no recovery at all"). Therefore, as this Court preliminarily determined during the March 2011 hearing, this factor weighs in favor of approving the Settlement as reasonable and in the best interest of the Class Members. (*See* Hrg. Tr., at 31-32). Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

C. THE CLASS BENEFITS PROGRAM IS A FAIR AND REASONABLE COMPROMISE OF THE CLASS CLAIMS FOR (B)(2) INJUNCTIVE RELIEF.

. While the Class Representatives allege and will endeavor to prove that PFOA levels in drinking water have created a nuisance that warrants abatement, DuPont strongly contests the

public and private nuisance claims and will defend the claims against it vigorously through trial and appeal, including any effort to require any form of treatment or filtering to reduce levels of PFOA in the Class Members' residential drinking water. The regulatory and scientific information relevant to these claims continues to evolve, and significant facts have changed since filing this suit. These factors, as well as more traditional legal uncertainty surrounding recovery in complex civil claims, weigh heavily in favor of the proposed Settlement, which provides certain relief now to Class Members.

Accordingly, Class Counsel and DuPont have negotiated a Class Settlement package with a total value of $8.3 million. The Filter Option that Class Member Households may elect under the terms of the Class Settlement Agreement is sufficiently related to the disputed Class Claims for injunctive relief to constitute a fair, adequate, and reasonable compromise of those claims, as certified under Civil Rule 23(b)(2). Through the Filter Option, each Class Member Household will be offered an identical water filter package selected by Class Counsel that includes: 1) an in-home water filter system[9]; 2) at least 10 replacement cartridges with a collective total expected service life of at least approximately 5 years (based on average water consumption/usage rates)[10]; 3) manufacturer's installation and operation instructions; 4) manufacturer's toll-free

[9] *See* Exhibits 2 and 3 to Preliminary Approval Motion, containing information concerning the Minnesota Department of Health study regarding the role that home filter systems may play in PFOA removal. (*Rowe* Doc, 503/*Scott* Doc. 440).

[10] The precise number of filters to be included in each package will depend on the total number of participating Class Member Households and the total amount of the Settlement Amount in the fund after deducting court-approved costs, fees, and expenses. Class Counsel contend that, according to currently-available information, the service life of the filter also may vary, ranging from approximately 6 months to one year per replacement cartridge, depending on water consumption/usage rates. (*See* Exhibit 1 to Preliminary Approval Motion (*Rowe* Doc. 503/*Scott* Doc. 440).

technical and customer service numbers; and 5) a check for at least $200 to cover the cost of any in-home water filter system installation services that may be desired.

The Parties recognize, however, that because of the nature of the benefit being provided and the length of time that the case has been pending, there may be Class Members who, for a variety of reasons, may prefer not to request the Filter Option. For example, a Class Member may feel that a filter is unnecessary or undesirable for any number of reasons - a Class Member may not like to drink tap water and may prefer bottled water, a Class Member may wish to select a filter other than the filter that Class Counsel have chosen for the Filter Option, or, given that information regarding the presence of PFOA in area water supplies has been available now for several years, a Class Member already may have a filter and may not want another one.[11] In an effort to address these types of situations while treating all Class Members fairly, the Parties have agreed that, under the Class Benefits program, each Class Member Household will be offered the option of choosing either the water filter package (i.e., the Filter Option), or a uniform incidental cash payment that will be of equivalent value to the Filter Option currently estimated at $800 (i.e., the Incidental Payment Option). The $800 Incidental Payment Option represents the approximate total value of the water filter package with 10 replacement cartridges.

The Incidental Payment Option does not interfere with the Court's Rule 23(b)(2) class certification, because the payments will be uniform and will require no individualized inquiry and, therefore, have no impact on the cohesiveness of the nuisance subclasses. The Third Circuit

[11] The Court has previously taken evidence that not every class member has altered his or her water consumption practices because of the PFOA levels found in either the public water supply or in private wells and that some members of the class already have home filtration units.

has not addressed the field of operation for incidental payments in a (b)(2) class in a published opinion;[12] however, the Third Circuit embraced the concept of incidental payments in *Barabin v. Aramark Corp.*, 2003 WL 355417 (3d Cir. Jan. 24, 2003). There the Third Circuit opined:

> Class actions certified under Rule 23(b)(2) are limited to those cases where the primary relief sought is injunctive or declaratory relief. At least two courts of appeals have devised a test for certification of a (b)(2) class. Under this test, where parties seek monetary relief, a court may only certify a class if the damages claim is incidental to the primary claim for injunctive or declaratory relief. We agree.
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> . . .
>
> Incidental damages are those 'that flow directly from liability to the class *as a whole* on the claims forming the basis of the injunctive or declaratory relief.' *Allison [v. Citgo Petroleum Corp.,* 151 F.3d 402, 415 (5th Cir.1998)](emphasis in original). Consistent with this analysis, whether damages are 'incidental' depends on: (1) whether such damages are of a kind to which class members would be automatically entitled; (2) whether such damages can be computed by 'objective standards' and not standards reliant upon 'the intangible, subjective differences of each class member's circumstances'; and (3) whether such damages would require additional hearings to determine. *See id.*

Id. at *1-2.[13] The Third Circuit concluded that the damages that the putative class members

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[12] *See Hohider v. United Parcel Service, Inc.*, 574 F.3d 169, 199, 202 (3d Cir. 2009)(noting in dicta that the court has "not yet spoken on how the predominance of monetary relief in the Rule 23(b)(2) context should be measured," and that "it was not sufficient for the [district] court simply to identify back pay as potentially incidental to [injunctive and declaratory] relief . . . it was necessary for the [district] court to determine whether plaintiffs' back-pay request actually conforms with the requirements of Rule 23, including Rule 23's monetary-predominance standard. And were the [district] court to find that such relief could go forward under Rule 23(b)(2), it would then need to address how that relief would be managed, specifying, for example, the methodology by which calculations and awards of relief would be made with respect to individual class members.").

[13] The *Allison* opinion states: "Monetary relief predominates in (b)(2) class actions unless it is incidental to requested injunctive or declaratory relief. *Accord Williams v. Owens-Illinois, Inc.*, 665 F.2d 918, 928-929 (9th Cir.), *cert. denied,* 459 U.S. 971, 103 S.Ct. 302, 74 L.Ed.2d 283 (1982). By incidental, we mean damages that flow directly from liability to the class *as a whole* on the claims forming the basis of the injunctive or declaratory relief ... Ideally, incidental damages should be only those to which class members automatically would be entitled once

sought were not incidental: "[i]n lieu of a claim for damages that automatically flow directly to the class as a whole, Plaintiffs aver that they have been 'damaged in an amount to be proven at trial.' This requires that evidence of the harm suffered by each plaintiff be produced for the jury's consideration at trial. We therefore conclude that the plaintiffs do not meet the criteria for class action certification under Rule 23(b)(2)." *Id.* at *2.

For years, New Jersey's district courts have followed *Allison.* In *Mulder v. PCS Health Systems, Inc.*, 216 F.R.D. 307 (D.N.J. 2003), the district court certified a (b)(2) class in which the class representatives sought to recover profits that an ERISA pharmaceutical benefits manager allegedly improperly obtained from its contracts with drug manufacturers. The court explained that, "[t]he fact that Mulder seeks disgorgement of illegal profits, however, does not mean that his request for relief is predominantly monetary . . . The monetary relief requested meets the *Allison* court's definition of incidental damages . . . [T]he illegal profits sought would flow from liability to the class as a whole on the claims that PCS breached its ERISA fiduciary duties - forming the basis for the requested injunctive and declaratory relief [and] [s]uch damages would be computable by objective standards, would not require individualized hearings, and would be a quintessential 'group remedy.'" *Id.* at 319. In contrast, in *Wilson v. County of Gloucester*, 256 F.R.D. 479 (D.N.J. 2009), the court decided that the class representatives' damages demands

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liability to the class (or subclass) as a whole is established [citations omitted]. That is, the recovery of incidental damages should typically be concomitant with, not merely consequential to, class-wide injunctive or declaratory relief ... Liability for incidental damages should not require additional hearings to resolve the disparate merits of each individual's case; it should neither introduce new and substantial legal or factual issues, nor entail complex individualized determinations. Thus, incidental damages will, by definition, be more in the nature of a group remedy, consistent with the forms of relief intended for (b)(2) class actions." *Allison,* 151 F.3d at 415 (emphasis supplied).

could not be characterized as incidental payments for purposes of (b)(2) class certification because damages could not be calculated without individual inquiries. *Id.* at 491 n. 19 (citing *Allison*).[14]

The district court in *Serio v. Wachovia Securities, LLC*, 2009 WL 900167 (D.N.J. March 31, 2009), gave final approval to a Rule 23(b)(2) class settlement that included incidental payments. The plaintiffs, former Wachovia employees, sought to recover wages that they contributed to ERISA plans. The proposed settlement provided that one group of class members would recover 4% of their wage contributions, another group would recover 3% of their wage contributions, and a third group of class members would recover $500. *Id.* at *2. The Court held that a (b)(2) settlement class was appropriate "because the basis for the suit is Wachovia's alleged failure to return certain deferred compensation plan contributions - a practice applicable to all Class members." *Id.* at *5. The method for calculating each class member's share of the total class consideration of $1,005,000.00 met *Allison*'s predominance/incidental benefit test because each class member's recovery was computed by "'objective standards' and not standards reliant upon 'the intangible, subjective differences of each class member's circumstances,'" and no additional hearings were necessary to determine each class member's recovery. *Barabin,*

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[14] *See also, Osgood v. Harrah's Entertainment, Inc.*, 202 F.R.D. 115 (D.N.J. 2001)(stating that Fifth Circuit's analysis of "the meaning of 'predominance' in the context of (b)(2) actions . . . has been widely followed," and holding that putative class members' damages claims were not incidental to their claims for injunctive relief because, "[e]ven if the members of the proposed class prove that the EEBOP affirmative action policy is illegal, each individual class member pursuing damages would still have to establish that his or her injury was caused by the EEBOP and . . . calculation of the amount of compensatory and/or punitive damages to which that individual would be entitled would necessarily be determined through a fact-specific inquiry as to the circumstances of that individual's employment or application for employment at Harrah's").

2003 WL 355417 at *2 (citing *Allision*).

As in *Serio*, the Incidental Payment Option is incidental to the injunctive relief that Class Representatives demanded in their complaints. The Incidental Payment is automatically available to Class Member Households; the payments do not "require additional hearings to resolve the disparate merits of each individual's case;" they do not "introduce new and substantial legal or factual issues;" and they do not "entail complex individualized determinations." Instead, the optional payments, in a single, fixed amount, are "more in the nature of a group remedy." *Allison*, 151 F.3d at 415. Moreover, under the terms of the revised proposed agreement, members of the Settlement Classes will release only their nuisance Class Claims for injunctive relief; they will not release existing damages claims.

Based on the foregoing, this Court preliminarily determined in March 2011 that the "incidental payment option is an incidental damage that flows directly from liability to the class as a whole on the claim that forms the basis of the injunctive relief," and, "for the reasons the parties have submitted … this is incidental to the injunctive relief." (Hrg. Tr., at 35-36.) Nothing has happened since the March hearing to support any different conclusion with respect to final approval of the Settlement.

VII. THE CLASS NOTICE SATISFIES RULE 23(E) AND DUE PROCESS REQUIREMENTS

A. The Notice Satisfies All Applicable Standards for Approval of the Settlement

Fed.R.Civ.P. 23(e) requires that "notice of the proposed dismissal or compromise shall be

given to all members of the class in such manner as the court directs." Notice is complete and sufficient for purposes of Rule 23(e) of the Federal Rules of Civil Procedure if it allows class members "a full and fair opportunity to consider the proposed settlement and to develop a response." *Dunn & Bradstreet Credit Services*, 130 F.R.D. 366, 370 (S.D. Ohio 1990). A Rule 23(e) notice satisfies this standard if it describes the settlement sufficiently to offer class members an opportunity to present objections. *In re Agent Orange Prod. Liab. Litig.*, 597 F.Supp. 740, 759 (E.D.N.Y. 1984), *aff'd* 818 F.2d 145 (2d Cir. 1987). The notice need not attach a copy of the settlement agreement; a general description of the settlement terms will suffice. *Id.; Kaplan v. Chertoff*, 2008 WL 200108 (E.D.Pa. Jan 24, 2008)(approving notice of proposed class settlement that did not provide the full text of the release, but informed class members "that they release[d] all 'settled claims' against the defendants"). The notice must state the options open to dissenting class members. *In re Agent Orange Prod. Liab. Litig.*, 597 F.Supp. at 759. Notice should allow class members a reasonable time to object to the proposed settlement "to permit class members to investigate and reflect on the matter before taking a position." *Id*. Finally, the Court must remain neutral and express no opinion on the merits of the settlement. *Id.*

In reviewing whether the notice provided in a particular case meets the requirements of Rule 23(e) and due process, the Court must consider both the content of the Notice and the mode of dissemination. *In re The Prudential Ins. Co. of America Sales Practices Lit.*, 962 F. Supp 450 (D.N.J. 1997). Both the content and the means of distribution of the Notice in this case exceed

the minimum requirements of Rule 23 and due process. The individual notice[15] was drafted using the "plain language" guidelines and notice forms developed by the Federal Judicial Center for use in federal courts. (*See* Byrne Dec., Ex. 1 (Final Mailed Notice).) The Notice is simple, easy to understand and accurately summarizes the key elements of the settlement. The distribution plan included mailing of individual notice to all class members by U.S. Mail. The notice also provided a phone number for any class members who had questions regarding the settlement.

In addition to the Court-approved class Notice, Class Counsel also sent a subsequent class communication in order to provide further information to class members about the Filter Option program. (*See id.*, at Ex. 2.) As such, Class Members received not just one class notice, but two separate class communications. This additional form of notice provides an added layer of due process protections for Class Members. Consequently, during the March 2011 hearing, the Court approved the Notice Plan (and associated Class Notice) for dissemination to Class Members, finding that the "Class Notice … is appropriate under the circumstances and is reasonably calculated to inform Class Members of the proposed Settlement, affords Class Members an opportunity to present their objections to the Settlement or to exclude themselves from the Settlement, and complies in all respects with the requirements of Rule 23 and applicable due process requirements." (Order, at 4-5. *See also* Hrg. Tr., at 39.) The Court also ordered

[15] For 23(b)(2) classes, the Court does not have to order individual notice. Instead, the Court may exercise its discretion in selecting the means by which the parties must supply notice. *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 962-63 (3d Cir.1983)("Rule 23(e) makes some form of post-settlement notice ... mandatory, although the form of notice is discretionary ... [because] (b)(2) classes are cohesive in nature"). Nevertheless, Class Counsel opted to send out individual notice to Class Members. *Spring Garden United Neighbors, Inc. v. City of Philadelphia*, 1986 WL 1525, *2 (E.D.Pa. Feb. 4, 1986).

Class Counsel to implement the Notice Plan submitted to the Court, with Class Notice to be mailed by April 4, 2011. (Order, at 5.)

Class Counsel has fully and successfully implemented the Notice Plan approved by the Court in March. (*See* Byrne Dec., at ¶¶ 8-14.) In summary, individual notice was provided to 4248 Class Households, estimated to include approximately 10,000 individual Class Members. Class Counsel also mailed an additional class communication (letter) to these same Class Households concerning the proposed water filter benefit program; responded to Class Member questions about the Settlement, the class notice deadlines, and the opt-out form; prepared and mailed follow-up Notices and class counsel letters to newly-identified Class Member residences and/or addresses; compiled and reviewed opt-out forms submitted by Class Members (and, in some cases, non-class members); and, reviewed and researched class settlement objections submitted to the Court. (See, id.)

Finally, in compliance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. 1715(b), and the Court's Preliminary Approval Order, counsel for DuPont provided notice of the proposed Settlement to U.S. Attorney General Eric H. Holder, Jr. and the Commissioner of the New Jersey Department of Environmental Protection, Bob Martin. (*See* Affidavit of John Johnson, Exhibit F.)

If this settlement is finally approved Class Members will receive Claim Forms (through the Class Administrator), which each Class Household will be required to complete and return to the Class Administrator in order to receive the Class Benefits. (*See* Johnson Dec., Ex. D (Ex. 1 (Claim Form)). The Claim Form allows the Class Households to specify whether they desire to receive the Filter Option or the Incidental Benefits Option, as provided under the Settlement.

The Parties hereby jointly move the Court to appoint Mr. Gentle as the Class Administrator so that he may move forward with implementation of the claim process and distribution of Class Benefits promptly upon final approval of the Settlement.

B. Opt-Out Rights Were Provided to Class Members

The Parties agreed to extend opt out rights to Class Members and asked the Court to approve an opt-out option. In its Preliminary Approval Order, the Court exercised its discretion and provided Class Members with opt-out rights, even though such rights were not automatically required. (Order, at 6-7). *See Martens v. Smith Barney, Inc.***,** 181 F.R.D. 243 (S.D.N.Y. 1998); *In re Monumental Life Ins. Co.*, 365 F.3d 408, 417 (5th Cir. 2004). Of the 4248 notices that were mailed by Class Counsel, only 27 Class Members submitted timely opt-out notices - - less than 0.3% of the total estimated Class Members. (*See* Byrne Dec., Ex. 3.) As explained above, the fact that so few class members opted-out of the settlement is further evidence as to why this settlement should be approved.

IX. CONCLUSION

The proposed Settlement is fair, reasonable and adequate. Consequently, based upon the evidence presented and the analysis of applicable law, the Parties respectfully request that the Court find that all of the requirements of Rule 23(e) have been met and that the Settlement should be approved. The Parties further request that the Court enter a final judgment dismissing the Class Claims, with prejudice, consistent with the Settlement. The Parties also request that the Court enter an Order appointing Mr. Gentle as Class Administrator under the terms of the Settlement and the Class Administrator Agreement being tendered to the Court with these final approval papers.

May 24, 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, ET AL., individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

DECLARATION IN SUPPORT OF PARTIES' JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, John M. Johnson, declare as follows:

1. I am a partner with the law firm of Lightfoot Franklin & White, LLC in Birmingham, Alabama and counsel of record in the above-captioned matter on behalf of Defendant E. I. duPont de Nemours and Company ("DuPont").

2. I submit this declaration in support of the Parties' Joint Motion for Final Approval of Class Action Settlement pursuant to Local Rule 23(e). I have supervised the collection of exhibits accompanying the within motion and have personal knowledge of the facts set forth herein.

3. Attached hereto as Exhibit A is the March 22, 2011 transcript of the Preliminary Approval hearing.

4. Attached hereto as Exhibit B are copies of the signed Class Representative Participation Agreements.

5. Attached hereto as Exhibit C is a proposed Final Approval Order.

6. Attached hereto as Exhibit D is the Class Administrator Agreement with attached exhibits 1-5.

7. Attached hereto as Exhibit E is the Class Administrator's resume.

8. I further declare that on March 4, 2011, in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. 1715(b), I sent a letter by Certified Mail to U.S. Attorney General Eric H. Holder, Jr. and the Commissioner of the New Jersey Department of Environmental Protection, Bob Martin to notify them that the Parties have agreed to settle these actions.

9. A true and correct copy of this letter is attached hereto as Exhibit F.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 24th day of May, 2011.

John M. Johnson

John M. Johnson, Esq.
Kevin E. Clark, Esq.
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, ET AL., individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
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Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RICHARD A. ROWE, et al, individually.

Plaintiffs,

-vs-

DUPONT E.I. DUPONT DE NEMOURS & COMPANY

Defendant.

CIVIL ACTION NUMBER

06-3080(RMB)(AMD)

MISTY SCOTT, on behalf of herself and all others similarly situated,

Plaintiffs,

-vs-

E.I. DUPONT DE NEMOURS AND COMPANY,

Defendant.

CIVIL ACTION NUMBER

06-1810(RMB)(AMD)

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
March 22, 2011

B E F O R E: THE HONORABLE RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

TAFT STETTINIUS & HOLLISTER, LLP
BY: Robert A. Bilott, Esquire

EDGAR C. GENTLE, III, ESQUIRE
NOMINATED CLAIMS ADMINISTRATOR

BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
BY: David B. Byrne, Esquire

LIEBERMAN & BLECHER, P.C.
BY: Shari Blecher, Esquire
ATTORNEYS FOR THE PLAINTIFFS

APPEARANCES CONTINUED:

PORZIO, BROMBERG & NEWMAN, P.C.
BY: Jeffery Pypcznski, Esquire
Anthony Cavanaugh, Esquire

LIGHTFOOT FRANKLIN WHITE
BY: John M. Johnson, Esquire
Madeline H. Haikala, Esquire

Attorneys for Defendant E.I. DuPont De Nemours & Company

Certified as true and correct as required by Title 28, U.S.C, Section 753.

/S/ Theodore M. Formaroli, CSR, CRR

THE DEPUTY CLERK: All rise.

THE COURT: Good morning. You may be seated.

We're here in the matter of Scott versus DuPont and Rowe versus DuPont, 06-3080 and 06-1810. Let's start with the appearances with plaintiff.

MR. BILOTT: Rob Bilott for plaintiffs. Good morning.

THE COURT: Good morning.

MR. GENTLE: I'm Ed Gentle, the nominated claims administrator.

THE COURT: Welcome.

MS. BLECHER: Shari Blecher on behalf of plaintiff.

MR. BYRNE: And David Byrne on behalf of plaintiff.

THE COURT: Good morning.

MR. JOHNSON: John Johnson on behalf of DuPont. And, your Honor, this is Madeline Haikala, my partner here with me. And she's not appeared in the case and we'd ask for her to be allowed to sit at counsel table.

THE COURT: She may. Welcome.

MS. HAIKALA: Thank you.

THE COURT: Welcome to New Jersey.

MS. HAIKALA: Thank you.

MR. PYPCZNSKI: Good morning, your Honor. Jeff Pypcznski with Porzio, Bromberg and Newman on behalf of DuPont.

THE COURT: Good morning.

MR. CAVANAUGH: Anthony Cavanaugh on behalf of DuPont.

THE COURT: Okay, good morning.

Mr. Cohen has given up on me?

MR. PYPCZNSKI: I wouldn't say that, your Honor. He was unavailable today.

THE COURT: Okay.

So this is before me on a joint motion for settlement for preliminary approval of the class action. So I have several questions and concerns, I want to go through those, if we can, if the parties can just bear with me.

Let's see. So, the plaintiffs have withdrawn DJL, Jr., a minor, and Mary Carter, who has passed away as representatives for purpose of the settlement. And there is nothing I need to do about that other than they will not be signatories, obviously, to the settlement agreement. Is that right? Is there anything procedurally that I need to do?

MR. BILOTT: Your Honor, Rob Bilott for plaintiffs. I believe that there is some paperwork that the family is taking care of at this point, but eventually there will probably be a notice of the death filed with the Court and possibly a substitution of party just for the eventual wrap-up of the case. But as far as the class settlement approval, no, there is nothing that your Honor needs to do with that at this

point.

THE COURT: But in terms of the claims going forward individually, there will be a certification of death filed and from there the parties -- I think it's Rule 25. But in terms of class action settlement, there is nothing I have to do?

MR. BILOTT: Correct, your Honor.

THE COURT: And the same is true for DJL, there there's nothing I need to do.

MR. BILOTT: Correct, your Honor.

THE COURT: Now, is there something you need to do in terms of dismissing him as a plaintiff?

MR. BILOTT: No, your Honor.

THE COURT: You don't believe so? No?

MR. BILOTT: No.

THE COURT: Okay. There has been a motion filed by DuPont to have me reconsider my ruling relating to the subclass of the private wells. There is a motion for reconsideration pending on that. Is that mooted out if I am to approve the class action settlement?

MR. JOHNSON: Yes, your Honor, I think it is.

THE COURT: Okay. My next question is that when I read, and you all are very familiar with the agreement, when I read the agreement, I don't see the terms spelled out in terms of the filter option and the incidental payment option. They are spelled out quite specifically in the notice, and I'm

wondering should not that be incorporated into the settlement agreement? Unless I'm missing it, I don't see -- when I look through the settlement agreement, it refers to filter option is an option whereby a household elects a water filter package designated by class counsel, and the incidental payment option is defined is the option whereby a household elects the incidental cash benefit, but nowhere in the agreement do I see that that is spelled out. Am I right about that?

MR. BILOTT: Your Honor?

THE COURT: Yes.

MR. BILOTT: Again, Rob Bilott for plaintiffs. I believe that each --

THE COURT: You are so used to telephone conferences?

MR. BILOTT: Yes.

THE COURT: It's so funny. I can see who you are, Mr. Bilott, so you don't have to -- yes, okay.

MR. BILOTT: I believe that the way the parties intended this, your Honor, is that each of the attachments to the agreement, which include the class notice and some of the other documents you've mentioned, are all incorporated and part of the class settlement agreement.

THE COURT: Is that set forth in here somewhere?

MR. BILOTT: I was looking through the miscellaneous provisions right now, but I believe it should be in there.

MR. JOHNSON: It is. Your Honor, it's Section 4.1.4.

THE COURT: But that doesn't incorporate what's contained in the notice as terms of the settlement agreement.

MR. JOHNSON: Yes. Your Honor, but in the paragraphs above that in .4 it describes the notice plan and there is a provision in here which incorporates all the exhibits.

MR. BILOTT: Your Honor, I believe it's Section 1.2 on page 3, the definition of agreement means this class settlement agreement, including all exhibits.

THE COURT: Oh, okay. Okay. I think a combination of 1.2 and 4.1.3 addresses that concern that I had. The concern being is that the notice is much more specific and gives I think much more meat to the reader than what this agreement lays out, but if it incorporates those documents then that takes care of that concern.

The parties have asked that I modify my certification order to certify the class as of the date of this order by which to grant preliminary approval, as opposed to my certification order that certified individuals as of the date of October 9, 2009. Right? So my question is, it seems to me that there are individuals who have been told that they are putative members of the class as of October 9, 2009, and if I were to modify my certification order, they no longer would be. So my question is shouldn't they be told that no one is defending or protecting their rights any longer? I don't know how many people we're talking about, and that might be helpful

to know, I guess it's individuals who may have moved out of town and now other people are living in those homes? My concern is that those individuals have received notice from class counsel that they are class members under my order and now if I were to modify it, they no longer are. So shouldn't they be told that?

MR. BILOTT: Your Honor, I believe that, first of all, just to clarify, the parties are moving to amend the definition of the class members so that it's as of the date of the actual class notice, not the date of this order.

THE COURT: Okay.

MR. BILOTT: And again focusing on what the Court has certified, which is the claims for injunctive relief for the nuisance claims, the parties believe that looking at who would actually be benefitting from that, it's the people who are living in those homes as of now, as of the time the injunctive relief in the form of the water treatment goes out, and it's the only -- those are the people that would benefit. And there was -- I don't believe there was any prior formal notice that went to class members when the original class certification notice went out. I mean when the class order was originally issued. The class --

THE COURT: You mean there was no communication by -- I don't want to get into the privilege -- but no communication by class counsel to residents that the Court has certified you

as part of a class?

MR. BILOTT: There was no formal communication as -- I believe there have been communications to class members, but I don't believe there has been a formal class notice, as the Court used that term, saying you are hereby included in this class. I don't believe that is the type of notification that has gone out. We have sent communications to class members about the case.

THE COURT: Are you sure about that?

MR. BILOTT: Yes, your Honor. But, I believe that what we're looking at now is the definition of who would best be in this class. The Court has the power to alter or amend the class order at any point in the case, and if we're focusing on the individuals who are giving up or releasing their claim for injunctive relief, the people that are giving up that claim are the people that are in those houses right now. So, if you are looking at what about these people who were in the homes as of October in 2009, granted they would not -- if they've moved out and they are no longer living in that home, granted they are not going to be getting now the offer of a water filter or any other benefit under the class settlement, but they also would not be releasing any claim.

THE COURT: Right. I get that. My concern was is that they had been notified that they were members of a class that this Court had certified and so they may have moved

elsewhere still knowing that or believing that they were and shouldn't they be told? But if you are telling me that they were never told that, then I'm more comfortable with it.

Yes?

MR. BILOTT: Yes, your Honor.

THE COURT: All right. I had had a telephone conference with counsel. The question I had posed was there are -- in the event the claims administrator has leftover funds, what happens to those? And the answer that I got back and I understood was that if there were any leftover funds, then it would be distributed pro rata. So if someone had chosen the filter option, they might get an additional filter; if they had chosen the cash option, they might get 40 dollars, whatever that amount comes to. Am I right about that?

MR. BILOTT: Correct, your Honor.

MR. JOHNSON: Yes, your Honor.

THE COURT: Is that in the agreement?

MR. BILOTT: It is a supplement to the class joint motion. I don't believe it's expressly spelled out that way in the settlement agreement, your Honor, but we believe that by asking the Court to include it as part of the joint motion and as part of the parties' joint request for approval that it is incorporated into what we are asking the Court to grant as far as relief.

THE COURT: And do I need to incorporate that

anywhere in terms of -- I mean do I need to memorialize that anywhere?

MR. BILOTT: I believe, your Honor, that if the Court were to preliminarily approve the settlement, it could make reference to the fact that it's preliminarily approved based on the filings of the parties and including the supplemental filings explaining those provisions.

THE COURT: Right. But what assurance do I have that the claims administrator is going to follow that? Because the claims administrator is going to look at what his job is by -- you know, his duties under the settlement agreement, and if it's not spelled out there, I just don't want a situation where we're back in court and the claim administrator is saying to me what do I do with all this money? I say, well, the lawyers represented to me -- I mean --

MR. BILOTT: Understood, your Honor. What will actually happen is if the Court preliminarily approves the settlement and sets a fairness hearing date, prior to the fairness hearing there will be a motion for approval of a class claims administrator agreement and that agreement will lay out the terms --

THE COURT: Okay.

MR. BILOTT: -- under which the claims will be processed and the benefits will be provided.

THE COURT: With those directions. Okay.

MR. BILOTT: Correct, your Honor.

THE COURT: All right. So if I understood it, one of the questions I had is why do you want me to modify my certification order to include individuals -- certify the class only as to the individuals as of the date of the class notice, and the answer is, is that because of the relief being sought here and the relief being given, it best serves those who are currently in their homes.

MR. BILOTT: Correct, your Honor.

THE COURT: Which makes a lot of sense.

Okay. Who wants to persuade me? Who wants to argue?

MR. BILOTT: Your Honor, I'll speak on behalf of plaintiffs first.

THE COURT: All right.

MR. BILOTT: Currently before the Court, as the Court has mentioned, we have two motions currently pending. One is to modify the class order to clarify the definition of who is in the class, and we've just addressed why we believe, your Honor, that makes sense and why that best ties with the relief that's being provided to the class members as well.

We also are asking for the Court to eliminate certification of the strict liability issue. As noted in the parties' joint motion, we don't believe that any of the class members give up anything by eliminating this issue, but it does greatly improve the class settlement agreement and

eliminates potential issues I believe the Court addressed last hearing about what effect having that issue released could have on future claims. So, we believe that clarification of the class definition and elimination of the strict liability issue makes sense and will assist in a smooth administration of the settlement agreement.

As far as the join motion for preliminary approval, I don't plan to go through all of the factors that we've addressed already in the briefing, but I do want to hit some of the issues before the Court. We do believe that this settlement presents a fair, reasonable and adequate settlement for the class and it's worthy of approval, preliminary approval. Under this agreement, DuPont will pay 8.3 million which will go toward providing a benefit to the class members in the form of an offered water treatment system for in-home use. And class counsel has spent a lot of time reviewing the available data, technical data, on the ability of various systems to treat drinking water for PFOA, the ability to remove or filter that water. And has also reviewed, and I don't believe we spent much time addressing this in the supplemental materials, which is why I want to mention it now, we did compare a variety of those systems and looked at what was the potential availability for a large number of those to be purchased on the open market and what were their costs. And the system that counsel selected to be offered to the

class members, we believe is one that is both widely available and is also one of the most reasonably priced. Not only for the original system, but for the replacement filters, and that is the system that we've outlined in our court papers, your Honor, the Culligan system.

THE COURT: I took it from the papers that it was more readily available so after five years or ten years, however long it will take to go through the filters, they could get additional filters in the market.

MR. BILOTT: Correct, your Honor. That was our understanding as well from the available information.

We also spoke with the individuals at the Minnesota Department of Health to make sure there hadn't been any changes or modifications to the report since it was issued or any developments with any of the providers of those systems that we should know about.

THE COURT: Mr. Bilott, that actually raises another question that I had. A member getting this notice may ask why Minnesota, and I thought it might be wise to say why Minnesota. And I took it to mean, well, there are very few studies on this and Minnesota was one of them that you felt comfortable with. But, do you think that they should be at least told why Minnesota? It just seems to kind of come out of thin air.

MR. BILOTT: Well, the reason, your Honor, why

Minnesota, Minnesota had experienced an issue with PFOA and other perfluoral chemicals in drinking water in that state in the 2005 to 2008 time frame as well. That state, their legislature authorized the funding of a study to look into the availability of these systems on a widespread basis because the state was having to fund a lot of these systems at the time. It's the only state, to our knowledge, that has funded such a study.

THE COURT: Well, something you might want to think about when we get to the notice, which I know you folks have asked me to look at, because one of the thoughts I had is that you may want to put in your notice why Minnesota. I mean, that seems like a perfectly legitimate reason to tell them, but it might send people looking at that scurrying for why are they looking at Minnesota? Isn't there anything in New Jersey? We're dealing with the common household member who doesn't have training, obviously, in these areas, so...

MR. BILOTT: One of the items that's also before the Court, your Honor ask a proposed communication from class counsel to the class.

THE COURT: Right.

MR. BILOTT: A separate letter that we intend to send out. We could propose to add a sentence there, your Honor.

THE COURT: Well, I'm sort of digressing here. Have you shared that with DuPont? Because you don't need to. I

took it that you had.

MR. BILOTT: Yes, they have been copied on it, your Honor.

THE COURT: Yes. And that certainly was of your own choosing. I've tried to be carefully throughout this litigation of not impinging on the attorney/client privilege. I've made it very clear that I don't have to approve these communications, but there have been some problems, which is why I had gotten involved the first time. But you've asked me to look at it.

So one of my recommendations to you would be I think you should put in there in a sentence or two why you chose Minnesota, either because, as you just said, it's a state that has performed more of an exhaustive study than other states, or something to that effect, otherwise I think you are going to get a lot of phone calls relating to that issue.

MR. BILOTT: Okay your Honor. I think we will add that sentence into the letter from class counsel to class members, your Honor.

THE COURT: Okay.

MR. BILOTT: But we do believe that this settlement provides a reasonable, adequate and fair benefit to the class members, all class members, that each household will be offered this water system and, as indicated in the settlement papers, those who may not want the system for whatever reason,

if they already have purchased their own system or don't want it for whatever other reason, they will be offered an incidental cash payment, incidental benefit that we believe is to the fullest extent we can, equivalent value to the water system. And what we have tried to do was figure out on a conservative basis what would be the approximate value of the system as proposed to the Court, and then whatever that ends up being, as we already indicated, your Honor, there will be a separate class administrator agreement submitted to the Court for approval which will lay out how the class administrator will calculate how many filters each household will receive, what the values of those will be, an equivalent value will be offered to those seeking the cash incidental option as well, your Honor. And we believe that this is a fair and adequate settlement for the class.

Again, all of those settlement funds will go into that one program for the common benefit that will be offered to everyone, the same benefit. The incidental payment will be also the same to anybody who offers or seeks that benefit, your Honor; it will not have to be calculated on any individual basis, there will be one uniform payment made.

THE COURT: Mr. Bilott, am I correct that if notice is going to go out to each household and that they have to fill out this form and the form says which system they are going to choose, the filter or the cash benefit, if they don't

respond they are bound by the terms of the settlement, right?

MR. BILOTT: Correct. Your Honor.

THE COURT: So I have two concerns. Shouldn't a second notice go out? I know the agreement talks about one notice, but we all throw out junk mail that we don't recognize and I think it seems to be a harsh, a harsh result if someone just inadvertently throws the first notice out or doesn't get it.

MR. BILOTT: All right.

THE COURT: We are relying heavily on the U.S. Postal Service.

MR. BILOTT: Your Honor, I believe the way we envision this is that there will be a class notice going out after. If there is preliminary approval, a notice will go to the class members in the form that's been attached to the settlement papers explaining how this will work.

THE COURT: Right.

MR. BILOTT: If the settlement is approved, there will then be a claim form that goes out to all of these households. The class administrator will handle submission of that claim form to all the households. So in effect, they are getting a second notification of the benefits, your Honor.

And I'm reminded, your Honor, by counsel that we are also -- the way we've set this up, I think I now understand what the Court was getting at as far as the original class

notice, there will be a notice in the form that's attached to the settlement papers. That's the official class notice. Class counsel is sending a second letter to all of the class members in the form that we've also submitted to the Court that we've just discussed a few moments ago. So they will be getting two separate mailings, your Honor.

THE COURT: I don't remember the notice, does it lay out in bold -- if you don't fill out this form, does it advise them of the consequences? I want to make sure we take a look at that.

MR. BILOTT: Your Honor, the notice is attached to -- let me find it here -- the declaration of Roy Cohen, which is before the Court as Exhibit A --

THE COURT: Who is not here today.

MR. BILOTT: As Exhibit A, which is the class settlement agreement, and attached to the class settlement agreement at Exhibit 4 --

THE COURT: Hold on.

MR. BILOTT: -- is the proposed form of notice.

THE COURT: Let me get it. Where is it?

MR. BILOTT: It's Exhibit 4 --

THE COURT: Of Mr. Cohen's?

MR. BILOTT: -- to Exhibit A of Mr. Cohen's declaration.

THE COURT: Okay. Does it say --

MR. BILOTT: On page 6, your Honor, there is a subparagraph which is kind of set up as a question. Question number 16, what happens --

THE COURT: When are they getting this? This is the first communication?

MR. BILOTT: This is the first notice, your Honor.

THE COURT: The second communication is what?

MR. BILOTT: The second communication will be the letter that we've submitted to the Court that comes from class counsel.

THE COURT: Okay.

MR. BILOTT: We can add that same exact language in that second letter as well, your Honor.

THE COURT: Yes.

MR. BILOTT: We will do that, your Honor.

THE COURT: Okay. Now where is that language?

MR. BILOTT: On page 6 of Exhibit 4 after question number 16.

THE COURT: "What happens if I do nothing at all?" Okay, let's see. Okay, I want that in bold. "You must submit a timely valid claim form or you will not receive any class benefits." I want that in bold and caps.

MR. BILOTT: Okay. So for just for clarification, all of the text under number 16 you would like to be bold and all caps, correct, your Honor?

THE COURT: Well, I want "You must submit a timely valid claim form," this is what I want, "or you will not receive any class benefits." That has to be in bold and caps.

MR. BILOTT: Okay.

THE COURT: "Or you will not receive any class benefits." "If you do not opt out --" let me just read this again. And then I think to be consistent, "you will not get a class benefit."

MR. BILOTT: Okay. So the phrase, your Honor, in the third line down that begins after the comma, "if you do nothing - you will not get a class benefit." You want that all capped and boldfaced?

THE COURT: Yes, yes.

MR. BILOTT: All right.

THE COURT: And then here's what I want capped and bolded. In the first sentence I want this capped and bolded: "You must submit a timely valid claim form or you will not receive any class benefits." And in the second sentence what I want in caps and bolded, "if you do nothing, you will not get a class benefit."

MR. BILOTT: All right.

THE COURT: And somehow this language should be incorporated in the second, in the communication by counsel.

MR. BILOTT: Okay.

THE COURT: Okay?

MR. BILOTT: Understood.

THE COURT: Then I'm more satisfied that anyone receiving the correspondence understands the implications of doing nothing. Okay?

MR. BILOTT: Okay.

THE COURT: What happens if a significant number of households do nothing? Does that mean that the few that responded, and assuming the 5 percent isn't -- more than 5 percent don't opt out and DuPont declares the agreement null and void, does that mean that the few that wanted the water system gets a water system for the next 200 years?

MR. BILOTT: Your Honor --

THE COURT: It's probably unrealistic, isn't it? But, nonetheless, it's a question I need to ask.

MR. BILOTT: In that situation, the class members who did submit the claim forms and did choose the water option as you just described, would get the number of filters that corresponds to that amount that's in the settlement fund. We believe --

THE COURT: Well, in any event, that would become more of an issue that I could consider at the final hearing, couldn't I?

MR. BILOTT: Yes. Correct, your Honor.

THE COURT: Yes, okay.

Mr. Johnson, do you want to be heard?

MR. JOHNSON: Your Honor, we really have nothing to add to that. I'm happy to answer questions, if the Court has any.

MR. BILOTT: The only other thing I did want to point out, your Honor, was on the class notice, Exhibit 4, that we were just looking at we also would like to change one word on page 4 under the option one where we're talking about the class filter option. We had mentioned -- we used the phrase "a $200 check." And to be consistent with what we described in our supplemental filing about the way those costs would be calculated, we believe that should say "an approximately $200 check" just in case some of the money needs to be allocated, as we described in the supplemental filing, toward the check that goes toward installation costs.

THE COURT: Well, you can't say it that way because this check is to cover expenses relating to installation. So they're all getting a $200 check regardless of whether or not there is money left over. No?

MR. BILOTT: Correct, your Honor. But if you recall in the supplemental filing the way we described how the benefits would be divided equally among the class members, if there was an unequal amount of money left over at the end, there wasn't quite enough to pay for one more filter system for the people that were choosing the filter, in order to allocate that money equally to among the class members that

would be put onto the $200 installation check.

THE COURT: Don't you think it should be more like "at least a $200 check?" Because they're not going to get $188.

MR. BILOTT: Correct, your Honor. It would be at least 200. We just wanted to make it clear that --

THE COURT: How about "at a minimum a $200 check?"

MR. BILOTT: That's fine.

THE COURT: I think by saying "approximately" they're thinking, well, maybe 150, it might be -- what do you folks think?

MR. BILOTT: "At least" would be fine with us, your Honor.

THE COURT: Mr. Johnson, what do you think?

MR. JOHNSON: We have no objection to that, your Honor.

THE COURT: "At least."

MR. JOHNSON: Yes, your Honor.

MR. BILOTT: We just didn't want it to be as definite as it sounded in here.

THE COURT: Or "at minimum," whatever language. That's what lawyers get paid for. "At a minimum," "at least," whatever. Okay.

I had asked you a question, Mr. Bilott, about whether or not the class members had been told that they were putative

class members as of October 9, 2009. You said no. My same question applies to whether or not they were told that the strict liability issue was something that was going to be litigated? It's the same question. I assume the answer is no?

MR. BILOTT: Correct, your Honor.

THE COURT: All right. This matter comes before me upon a joint notice of motion for preliminary approval of a class action settlement. The parties seek preliminary approval of this settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. "A class action cannot be settled without the approval of the Court and a determination that the proposed settlement is fair, reasonable and adequate. *In Re Pet Foods Products Liability Litigation*, 629 F.3d 333 at 349 (3d Cir. 2010). Under Rule 23(e), the trial judge bears the important responsibility of protecting the absent class members, "which is executed by the Court's assuring that the settlement represents adequate compensation for the release of the class claims." *In re General Motors Corporation*, 55 F.3d 768 at 805 (3d Cir. 1995). *See also Ehrheart v. Verizon Wireless*, 609 F.3d 590 at 593 (3d Cir. 2010) wherein the Court held that the purpose of Rule 23(e) is to protect the unnamed members of the class.

The requirement that a district court review and approve a class action settlement before it binds all the

class members does not affect the binding nature of the parties' underlying agreement. Put another way, judicial approval of a class action settlement is a condition subsequent to the contract and does not affect the legality of the proposed settlement agreements. *Ehrheart* 609 F.3d 590 (3d Cir. 2010).

The Third Circuit has identified nine factors that have to be considered in determining the fairness of a proposed settlement. These have been commonly referred to as the *Girsh* factors stemming from the Third Circuit's decision in *Girsh v. Jepson*, 521 F.2d 153 at 157 (3d Cir. 1975). The Third Circuit has also identified additional factors called the *Prudential* factors identified by the Third Circuit in *In re Prudential* 148 F.3d at 323.

The first factor that the Court must consider is the complexity, expense and likely duration of the litigation.

This is a case that the Court has been involved in quite intimately for several years. For more than four years the parties have litigated this very complex case. This is a case that involves complex tort claims in both Rowe and Scott. The parties have engaged in extensive discovery and motion practice. As the parties recognize, more than three million pages of documents have been exchanged; over 50 depositions extending across the country have taken place; dozens of interrogatories, requests for production and requests for

admission have resulted. In addition, the parties have identified more than two dozen expert witnesses in numerous disciplines in support of their claims or defenses. Clearly, complex scientific and legal issues have pervaded this litigation. Opinions from, as I indicated two dozen experts have ranged widely from toxicology to epidemiology to chemical fate and transport.

The Court has spent considerable judicial resources with this case and if this case were not to settle or to go to trial, much more resources would be expended, time and expenses, and that doesn't include potential appeals to the Third Circuit, all saying to this Court that it would be very time consuming, expensive and difficult. So I find that this factor favors preliminary approval of the settlement.

The reaction of the class to the settlement is not a factor at this preliminary stage, it will become relevant after the class members have received notice and an opportunity to object or opt out.

The third factor is the stage of the proceedings and the amount of the discovery completed. I have already alluded to that, but this factor captures the degree of case development that class counsel have accomplished prior to settlement. *In re Cendant*, 264 F.3d at 201 (3d Cir. 2001). It allows the Court to determine whether counsel had an adequate appreciation of the matters of the case before

negotiating. There can be no question, given the extent of this litigation, that counsel have clearly had more than an adequate opportunity to appreciate the merits of the case. The class representatives and members have been represented by experienced class counsel, who have thoroughly evaluated the likelihood of the claims and their success. The parties have briefed dispositive motions and those motions have been pending before the Court. As such, counsel are well positioned to evaluate the likelihood of success should the litigation proceed.

The same is true for DuPont. They've been represented by experienced counsel throughout this litigation; they understand the time and expense of continued litigation and what a trial would mean in this case, what an appeal might bring. In all, each party has had more than an adequate opportunity to evaluate these issues with experienced counsel. So this is a factor that weighs in favor of approving the settlement.

The fourth factor, the risk of establishing liability. DuPont has vigorously disputed liability in this case; it has moved for summary judgment on all counts, it has moved to exclude the opinions and testimony of the plaintiffs' key experts, and it has challenged this Court's certification of certain claims. As a result, class representatives face significant and potentially meritorious defenses based on the

facts and the law if this case were to proceed to trial. Because this Court has not yet ruled on any of the dispositive or expert motions, the class representatives face considerable risk as to their ability to establish liability. As I mentioned, regardless of which party prevails after conclusion of this complex trial, appeal seems almost certain. This consideration weighs in favor of approving the settlement because the settlement will guarantee tangible and immediate benefit to the class members and a final disposition of the case, thereby putting aside these challenges that I have just al luded to.

The fifth factor, the risk of establishing damages, is not a factor that applies to this case because it is a (b)(2) class. Although there is some monetary relief that may be provided to class members, that is incidental, as I will cover in a moment.

The sixth factor, the risk of maintaining the class action through the trial. This factor requires the Court to consider whether there is a significant risk that the class will not be maintainable through the course of the trial and there is a risk of class decertification. DuPont has contended that this Court improperly certified both the Rowe and Scott classes and DuPont will maintain its defenses to class certification. Of course, there is never a guarantee that the classes will remain certified throughout the balance

of this litigation.

Let me pause here for a second, because, Mr. Johnson, DuPont has contended that significant facts have developed sense I have certified this class that would affect or could affect certification and DuPont continues to maintain that.

MR. JOHNSON: Yes, your Honor.

THE COURT: Yes. Can you tell me what those are?

MR. JOHNSON: Yes, your Honor. Since this case was filed, there have been a number of scientific studies and we think that the bulk of the scientific research that's been done since the case was filed would indicate there is no cause for concern here, and that's the evidence we intended to present to your Honor, and did present in some of the motions we've filed.

THE COURT: So, as Mr. Johnson has set forth and as the papers that have been filed with the Court indicate, this is an area that is not a certain area, as Mr. Johnson just highlighted for the Court. There have been a number of scientific studies that DuPont would present that DuPont would attempt to persuade a jury that there is no valid cause of action here, given the conclusions of those scientific studies. Of course, plaintiffs would oppose that.

But in any event, given the information before the Court, those scientific studies might result in, depending upon what the level of PFOA is in each resident's water, and

as a result the class definition might change. That's how I have understood this argument.

Am I correct about that, counsel?

MR. JOHNSON: Yes, your Honor.

THE COURT: So that given that, there would be a risk or there could be a risk that the definition of the class might change. So given that, that is *Girsh* factor that weighs in favor of approving the settlement.

The seventh factor under *Girsh* is the ability of the defendants to withstand a greater judgment. This is not a claim that involves damages claims, so it's not a factor relevant to this case.

The eighth and ninth factors are the range of reasonableness of the settlement in light of the best recovery and the range of reasonableness of the settlement in light of all the attendant risks of litigation. These factors are used to evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case. The Court should consider whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial. *In re Prudential*, 148 F.3d 283 at 322 (3d Cir. 1998).

As I've indicated, the parties already have expended considerable time and resources on this litigation and the investment that they will have to maintain in these actions

going forward is significant. DuPont has vigorously contested both certification and liability and is committed to defending the claims against it through an appeal, if these cases do not settle. There is no doubt here that settlement provides real valuable and immediate benefit to the class members. The Court finds the settlement terms to be an adequate, fair and reasonable compromise of their claims for injunctive relief, and which are sufficiently related to the injunctive relief sought. It seems to the Court that while the plaintiff may secure a victory at trial, and there is a risk that the plaintiffs may not, but if the plaintiffs were to secure a victory that might result in some additional or alternative relief for class members, the proposed settlement certainly provides guaranteed benefits, and guaranteed benefits sooner. I find that even though the settlement does not provide all of the benefits that the class representatives initially sought in their lawsuits, full compensation is not a prerequisite. What is a prerequisite is that I find that the settlement is adequate, fair and reasonable compensation for the release of the class claims. And for the reasons I have just stated, I do find that the certainty of that class benefit is a weighed against the risk and time involved in seeing this case through trial and through an appeal. So those factors I find support approval of the settlement.

District courts must make findings as to the

Prudential factors, where appropriate. *In re Pet Food*, 629 F.3d at 350. I will briefly comment on the factors relevant here.

The maturity of the underlying substantive issues as measured by experience and adjudicating individual actions. I've already alluded to that, that these claims have been litigated and have been presented and all parties have had the benefit of discovery. So clearly, both parties have entered into this settlement knowing what the substantive issues are.

The development of scientific knowledge. Again, both parties know what is out there, they know what the scientific evidence is. As has been pointed out, it is something that the parties feel the settlement adequately addresses, given the state of the science.

The extent of the discovery on the merits and other factors that bear on the ability to assess the probable outcome of a trial and the merits of liability and individual damages. I have already discussed that.

The existence of the probable outcome of claims by other classes and subclasses I feel I have adequately addressed. The settlement provides certainty that a risk of going forward on other claims does not.

The comparison between the results achieved by the settlement for individual class or subclass members and the results achieved, or likely to be achieved for other

claimants.

Whether class or subclass members are accorded the right to opt out of the settlement. In this case, though, while required, the settlement agreement does provide the ability to opt out of the settlement. So that is a factor that certainly weighs in favor of approving the class.

Any provisions for attorneys fees are reasonable. In this case, if this Court were to preliminarily approve the settlement, class counsel will file a petition seeking an award of reasonable attorneys' fees and expenses incurred in connection with their representation of the class members in the actions. That petition will lay out in detail the services rendered and the expenses incurred; it will be available for all class members to review and the Court will review it sufficiently in advance of the final fairness hearing. So there will be an opportunity for this Court, as well as class members, to review them and an opportunity for this Court to determine the reasonableness of the fees.

One of the issues that I have to also address is whether or not the class benefits is a fair and reasonable compromise of the claims for (b)(2) injunctive relief. The settlement agreement addresses two situations. One is the filter option, where the class member households may elect to obtain a filter system that the parties have researched and I am persuaded have engaged in a diligent analysis based upon

the declarations submitted to me that the filter system that they have researched is one that has been sufficiently tested, in particular by the Minnesota Department of Health, for PFOA removal, and that this option will include providing the homeowners with filters that could last up to ten years, but certainly five years at a minimum, but up to ten years. It provides technical assistance for customers who may need assistance in installing. It also provides a $200 check for those who may have to hire someone to install the services for them. And because the parties have recognized that there may be some class members who prefer not to request the filter option for a number of reasons, they drink bottled water or they already have a filter system, the settlement agreement takes that into consideration and offers what is called an incidental payment option. I had asked, and am persuaded, that that incidental payment option represents the approximate total value of the water filter package with ten replacement cartridges.

So one of the questions that, of course, is raised is that this is a (b)(2) class. Why that is important is because class actions certified under (b)(2) are limited to those cases where the primary relief sought is injunctive or declaratory relief, but just because there is an incidental payment option, for example, does not necessarily mean that this is not in conformity with a (b)(2) class. It is. I find

that the incidental payment option is an incidental damage that flows directly from liability to the class as a whole on the claim that forms the basis of the injunctive relief. So I do find that for reasons that the parties have submitted in their brief to me that this is incidental to the injunctive relief.

The other issue that I need to address is the parties have asked in connection with the motion for preliminary approval is that I modify my class certification order. In my October 9, 2009, class certification order I had certified two Rule 23(b)(2) nuisance classes for injunctive relief and a Rule 23(c)(4) strict liability class issue.

With respect to my (b)(2) certification, I had certified that all individuals who as of October 9, 2009, have an ownership interest in a private well within a two mile radius of DuPont's Chambers Works plant, which supplies drinking water containing PFOA. In the Scott case, I had certified all individuals who as of October 9, 2009, are residential water customers of Penns Grove Water System who have an ownership interest in, meaning own or lease, their real property served by PGWS which supplies drinking water containing PFOA. I also certified the issue under Rule 23(c)(4) which was whether DuPont's release of PFOA constitutes an abnormally dangerous activity.

So the parties have asked that I reassess my ruling

and modify my ruling and I am permitted to do that. See, e.g., *Lindsey v. Memphis-Shelby County Airport Authority.* 2000 WL 1182446, (6th Cir. 2000); *Phillips v. Philadelphia Housing Authority*, 2005 WL 1025151 (E.D. Pa. 2005); *In re Lloyds American Trust Fund Litigation* 2002 WL 31663577 (S.D.N.Y 2002).

Here, the parties have asked that I amend my order to modify the class definition and to eliminate the strict liability issue. They have asked that I modify my certification so that it embraces not individuals who as of October 9th had an ownership interest in real property served by PGWS or containing a private well within a two mile radius of the DuPont Chambers Works plant, but to certify it as of the date of the class notice so that the certification would be as to any individual who as of the date of class notice of the settlement has an ownership interest, meaning owns or leases in and occupies a residence located within two miles of Chambers Works plant that has a private well for drinking water that contains PFOA; and in the Scott case, any individual who as of the date of class notice of the settlement has an ownership interest, meaning owns or leases in or occupies a residence with drinking water supplied by the Penns Grove Water System.

So I think not only in terms of facilitating this settlement agreement but in terms of really what makes sense

here, that the Court will modify its certification. The relief that's being sought here is injunctive relief and so it certainly makes more sense that the injunctive relief is being provided to those individuals who are currently affected, and that would be those who have an ownership interest as I've just laid out, etcetera, as of the date of the class notice. So that does make more sense. Any individual who may have owned or leased property at the time who no longer would be covered because they no longer reside there is not barred from seeking any recovery against DuPont for whatever damages or relief they would seek.

The same is true for the strict liability issue. At this juncture, it would not seem to make any sense to continue the strict liability issue. Certainly, if I were to get rid of that issue, it would simplify the settlement and as the parties correctly point out, class members don't lose anything, they retain the ability to seek damages or other relief on the basis of a strict liability theory, or any other tort theory. They just will have to pursue their claims individually if they were to pursue such actions. So I will grant that motion and modify my certification order.

Going back to the *Prudential* and *Girsh* factors, one other factor that weighs in favor of approving the settlement is that to the extent there are any other individual claims against DuPont, the parties have represented that those

plaintiffs who have asserted individual claims against DuPont, those claims are being handled individually and apparently are being settled separately.

Let me address the opt out issue. As I mentioned earlier, Rule 23(b)(2) does not permit class members an absolute right to the opt out of the action, but the Third Circuit has recognized, where appropriate, that courts should consider whether class or subclass members are accorded the right to opt out of a settlement when assessing the fairness of a settlement. And that's in the *Prudential* case, 148 F.3d 283 at 323 (3d Cir. 1998).

As I have mentioned, I find that I do have the discretion to permit them and I do find the fact that this settlement agreement does permit an opt out inures to the fairness of the settlement agreement. I find the fact that the parties have provided a class member the right to opt out of the settlement is a factor that weighs in favor of approving the settlement.

The notice issue, which is what I must also look to, Rule 23(e) (1) requires that the Court direct notice of the settlement in a reasonable manner to all class members who would be bound by the proposal, and here the parties have agreed to provide individual notice not once but actually at least twice. So I'm satisfied that that factor has or will be met.

I don't think that I have failed to address any other factors. Is there anything I failed to address, Mr. Bilott?

MR. BILOTT: No, your Honor.

THE COURT: Mr. Johnson?

MR. JOHNSON: No, your Honor.

THE COURT: All right. So given all of those findings, I will grant the motion for preliminary approval of the settlement. I will modify the certification order and direct the notice. Now, do I have a proposed order?

MR. BILOTT: Yes, your Honor. It's Exhibit 1 attached to that same Exhibit A to Mr. Cohen's declaration as a proposed preliminary approval order.

THE COURT: Do you have an original?

MR. BILOTT: I have one I can provide to the Court.

THE COURT: So it doesn't have the --

MR. BILOTT: May I approach?

THE COURT: Yes.

I also have come comments on the notice. I have it.

(Short Pause)

We need to talk about dates. Before we do that, I did have some additional comments on the notice, Mr. Bilott. Maybe I took care of them. Let me see. Not the notice, the correspondence. No, all of my questions I've addressed, but you may want to make the same change on your -- you are going to make additional changes as we've talked about, but on the

letter you may want to make the same change for that $200.

MR. BILOTT: Correct, your Honor.

THE COURT: When should the fairness hearing take place? How far out? Let's talk about that and then I'll give you a date. Did anybody figure that out, how much time out?

MR. BILOTT: No, I don't believe we have actually discussed, your Honor, what the precise date would be. It obviously depends on the Court's schedule, but a lot of it is going to depend on how much time the Court sets for getting the notice out and allowing for the objections.

THE COURT: Well, you want to work backwards? How much time do you need to send the notice out?

MR. BILOTT: Probably within a week.

THE COURT: Okay. So, let's just sketch it out. Would you be ready to do all the notice on March 28th or do you want more time? Should I make it April 4th?

MR. BILOTT: April 4th, your Honor.

THE COURT: I'd rather give you more time than not enough. So notices go out on April 4th, let's just say, and then the proposal is that objections and opt outs must be postmarked no later than 50 days. So that would give them -- the proposal was 50 days from today.

MR. BILOTT: Correct, your Honor.

THE COURT: But the notices aren't going out for -- they should at least have a month. So, let's see. Shall we

say May 9th?

MR. BILOTT: Okay.

THE COURT: May 9th would be objections, opt outs. Then you'll need time to organize all of that. So the fairness hearing is June 14th. Motion for final approval and the petition for fees would need to be filed by May 24th. That will give you about two weeks after you've received any objections. So is that enough?

MR. BILOTT: Yes, your Honor.

THE COURT: Okay. The fairness hearing, you all do a bunch of travelling, shall I do it later in the day? Does that make any difference to you all?

MR. JOHNSON: Your Honor, morning is fine with us.

THE COURT: Okay.

MR. JOHNSON: I don't trust the airlines enough to try and get up here the same day.

MR. BILOTT: Same, your Honor.

THE COURT: All right. So let me look at the order again.

Could you folks just take a look at this?

MR. JOHNSON: Your Honor, this looks fine.

THE COURT: Okay.

(Short pause)

MR. BILOTT: Your Honor, it also looks fine to plaintiffs with the exception I just discussed with DuPont's

counsel. I believe on page seven there is a blank for the opt out deadline.

THE COURT: Oh, did I miss that?

MR. BILOTT: Yes. I believe it would be May 9th.

THE COURT: So the deadline for the objections and the opt outs are both the same?

MR. JOHNSON: Yes, your Honor.

MR. BILOTT: Correct.

THE COURT: And that's fine, right?

MR. BILOTT: Yes.

THE COURT: So my Deputy Clerk will have the headings redacted and then this will get filed in both cases.

I wish to compliment counsel for all of their very hard work on this case. It has been a long road. So we shall await the fairness hearing and I'll see you all in June.

MR. JOHNSON: Thank you, your Honor.

MR. BILOTT: Thank you, your Honor.

(Court adjourned at 11:30 a.m.)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RICHARD A. ROWE, et al, individually.

Plaintiffs,

-vs-

DUPONT E.I. DUPONT DE NEMOURS & COMPANY

Defendant.

CIVIL ACTION NUMBER

06-3080(RMB)(AMD)

MISTY SCOTT, on behalf of herself and all others similarly situated,

Plaintiffs,

-vs-

E.I. DUPONT DE NEMOURS AND COMPANY,

Defendant.

CIVIL ACTION NUMBER

06-1810(RMB)(AMD)

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
March 22, 2011

B E F O R E: THE HONORABLE RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

TAFT STETTINIUS & HOLLISTER, LLP
BY: Robert A. Bilott, Esquire

EDGAR C. GENTLE, III, ESQUIRE
NOMINATED CLAIMS ADMINISTRATOR

BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
BY: David B. Byrne, Esquire

LIEBERMAN & BLECHER, P.C.
BY: Shari Blecher, Esquire
ATTORNEYS FOR THE PLAINTIFFS

APPEARANCES CONTINUED:

PORZIO, BROMBERG & NEWMAN, P.C.
BY: Jeffery Pypcznski, Esquire
Anthony Cavanaugh, Esquire

LIGHTFOOT FRANKLIN WHITE
BY: John M. Johnson, Esquire
Madeline H. Haikala, Esquire

Attorneys for Defendant E.I. DuPont De Nemours & Company

Certified as true and correct as required by Title 28, U.S.C, Section 753.

/S/ Theodore M. Formaroli, CSR, CRR

THE DEPUTY CLERK: All rise.

THE COURT: Good morning. You may be seated.

We're here in the matter of Scott versus DuPont and Rowe versus DuPont, 06-3080 and 06-1810. Let's start with the appearances with plaintiff.

MR. BILOTT: Rob Bilott for plaintiffs. Good morning.

THE COURT: Good morning.

MR. GENTLE: I'm Ed Gentle, the nominated claims administrator.

THE COURT: Welcome.

MS. BLECHER: Shari Blecher on behalf of plaintiff.

MR. BYRNE: And David Byrne on behalf of plaintiff.

THE COURT: Good morning.

MR. JOHNSON: John Johnson on behalf of DuPont. And, your Honor, this is Madeline Haikala, my partner here with me. And she's not appeared in the case and we'd ask for her to be allowed to sit at counsel table.

THE COURT: She may. Welcome.

MS. HAIKALA: Thank you.

THE COURT: Welcome to New Jersey.

MS. HAIKALA: Thank you.

MR. PYPCZNSKI: Good morning, your Honor. Jeff Pypcznski with Porzio, Bromberg and Newman on behalf of DuPont.

THE COURT: Good morning.

MR. CAVANAUGH: Anthony Cavanaugh on behalf of DuPont.

THE COURT: Okay, good morning.

Mr. Cohen has given up on me?

MR. PYPCZNSKI: I wouldn't say that, your Honor. He was unavailable today.

THE COURT: Okay.

So this is before me on a joint motion for settlement for preliminary approval of the class action. So I have several questions and concerns, I want to go through those, if we can, if the parties can just bear with me.

Let's see. So, the plaintiffs have withdrawn DJL, Jr., a minor, and Mary Carter, who has passed away as representatives for purpose of the settlement. And there is nothing I need to do about that other than they will not be signatories, obviously, to the settlement agreement. Is that right? Is there anything procedurally that I need to do?

MR. BILOTT: Your Honor, Rob Bilott for plaintiffs. I believe that there is some paperwork that the family is taking care of at this point, but eventually there will probably be a notice of the death filed with the Court and possibly a substitution of party just for the eventual wrap-up of the case. But as far as the class settlement approval, no, there is nothing that your Honor needs to do with that at this

point.

THE COURT: But in terms of the claims going forward individually, there will be a certification of death filed and from there the parties -- I think it's Rule 25. But in terms of class action settlement, there is nothing I have to do?

MR. BILOTT: Correct, your Honor.

THE COURT: And the same is true for DJL, there there's nothing I need to do.

MR. BILOTT: Correct, your Honor.

THE COURT: Now, is there something you need to do in terms of dismissing him as a plaintiff?

MR. BILOTT: No, your Honor.

THE COURT: You don't believe so? No?

MR. BILOTT: No.

THE COURT: Okay. There has been a motion filed by DuPont to have me reconsider my ruling relating to the subclass of the private wells. There is a motion for reconsideration pending on that. Is that mooted out if I am to approve the class action settlement?

MR. JOHNSON: Yes, your Honor, I think it is.

THE COURT: Okay. My next question is that when I read, and you all are very familiar with the agreement, when I read the agreement, I don't see the terms spelled out in terms of the filter option and the incidental payment option. They are spelled out quite specifically in the notice, and I'm

wondering should not that be incorporated into the settlement agreement? Unless I'm missing it, I don't see -- when I look through the settlement agreement, it refers to filter option is an option whereby a household elects a water filter package designated by class counsel, and the incidental payment option is defined is the option whereby a household elects the incidental cash benefit, but nowhere in the agreement do I see that that is spelled out. Am I right about that?

MR. BILOTT: Your Honor?

THE COURT: Yes.

MR. BILOTT: Again, Rob Bilott for plaintiffs. I believe that each --

THE COURT: You are so used to telephone conferences?

MR. BILOTT: Yes.

THE COURT: It's so funny. I can see who you are, Mr. Bilott, so you don't have to -- yes, okay.

MR. BILOTT: I believe that the way the parties intended this, your Honor, is that each of the attachments to the agreement, which include the class notice and some of the other documents you've mentioned, are all incorporated and part of the class settlement agreement.

THE COURT: Is that set forth in here somewhere?

MR. BILOTT: I was looking through the miscellaneous provisions right now, but I believe it should be in there.

MR. JOHNSON: It is. Your Honor, it's Section 4.1.4.

THE COURT: But that doesn't incorporate what's contained in the notice as terms of the settlement agreement.

MR. JOHNSON: Yes. Your Honor, but in the paragraphs above that in .4 it describes the notice plan and there is a provision in here which incorporates all the exhibits.

MR. BILOTT: Your Honor, I believe it's Section 1.2 on page 3, the definition of agreement means this class settlement agreement, including all exhibits.

THE COURT: Oh, okay. Okay. I think a combination of 1.2 and 4.1.3 addresses that concern that I had. The concern being is that the notice is much more specific and gives I think much more meat to the reader than what this agreement lays out, but if it incorporates those documents then that takes care of that concern.

The parties have asked that I modify my certification order to certify the class as of the date of this order by which to grant preliminary approval, as opposed to my certification order that certified individuals as of the date of October 9, 2009. Right? So my question is, it seems to me that there are individuals who have been told that they are putative members of the class as of October 9, 2009, and if I were to modify my certification order, they no longer would be. So my question is shouldn't they be told that no one is defending or protecting their rights any longer? I don't know how many people we're talking about, and that might be helpful

to know, I guess it's individuals who may have moved out of town and now other people are living in those homes? My concern is that those individuals have received notice from class counsel that they are class members under my order and now if I were to modify it, they no longer are. So shouldn't they be told that?

MR. BILOTT: Your Honor, I believe that, first of all, just to clarify, the parties are moving to amend the definition of the class members so that it's as of the date of the actual class notice, not the date of this order.

THE COURT: Okay.

MR. BILOTT: And again focusing on what the Court has certified, which is the claims for injunctive relief for the nuisance claims, the parties believe that looking at who would actually be benefitting from that, it's the people who are living in those homes as of now, as of the time the injunctive relief in the form of the water treatment goes out, and it's the only -- those are the people that would benefit. And there was -- I don't believe there was any prior formal notice that went to class members when the original class certification notice went out. I mean when the class order was originally issued. The class --

THE COURT: You mean there was no communication by -- I don't want to get into the privilege -- but no communication by class counsel to residents that the Court has certified you

as part of a class?

MR. BILOTT: There was no formal communication as -- I believe there have been communications to class members, but I don't believe there has been a formal class notice, as the Court used that term, saying you are hereby included in this class. I don't believe that is the type of notification that has gone out. We have sent communications to class members about the case.

THE COURT: Are you sure about that?

MR. BILOTT: Yes, your Honor. But, I believe that what we're looking at now is the definition of who would best be in this class. The Court has the power to alter or amend the class order at any point in the case, and if we're focusing on the individuals who are giving up or releasing their claim for injunctive relief, the people that are giving up that claim are the people that are in those houses right now. So, if you are looking at what about these people who were in the homes as of October in 2009, granted they would not -- if they've moved out and they are no longer living in that home, granted they are not going to be getting now the offer of a water filter or any other benefit under the class settlement, but they also would not be releasing any claim.

THE COURT: Right. I get that. My concern was is that they had been notified that they were members of a class that this Court had certified and so they may have moved

elsewhere still knowing that or believing that they were and shouldn't they be told? But if you are telling me that they were never told that, then I'm more comfortable with it.

Yes?

MR. BILOTT: Yes, your Honor.

THE COURT: All right. I had had a telephone conference with counsel. The question I had posed was there are -- in the event the claims administrator has leftover funds, what happens to those? And the answer that I got back and I understood was that if there were any leftover funds, then it would be distributed pro rata. So if someone had chosen the filter option, they might get an additional filter; if they had chosen the cash option, they might get 40 dollars, whatever that amount comes to. Am I right about that?

MR. BILOTT: Correct, your Honor.

MR. JOHNSON: Yes, your Honor.

THE COURT: Is that in the agreement?

MR. BILOTT: It is a supplement to the class joint motion. I don't believe it's expressly spelled out that way in the settlement agreement, your Honor, but we believe that by asking the Court to include it as part of the joint motion and as part of the parties' joint request for approval that it is incorporated into what we are asking the Court to grant as far as relief.

THE COURT: And do I need to incorporate that

anywhere in terms of -- I mean do I need to memorialize that anywhere?

MR. BILOTT: I believe, your Honor, that if the Court were to preliminarily approve the settlement, it could make reference to the fact that it's preliminarily approved based on the filings of the parties and including the supplemental filings explaining those provisions.

THE COURT: Right. But what assurance do I have that the claims administrator is going to follow that? Because the claims administrator is going to look at what his job is by -- you know, his duties under the settlement agreement, and if it's not spelled out there, I just don't want a situation where we're back in court and the claim administrator is saying to me what do I do with all this money? I say, well, the lawyers represented to me -- I mean --

MR. BILOTT: Understood, your Honor. What will actually happen is if the Court preliminarily approves the settlement and sets a fairness hearing date, prior to the fairness hearing there will be a motion for approval of a class claims administrator agreement and that agreement will lay out the terms --

THE COURT: Okay.

MR. BILOTT: -- under which the claims will be processed and the benefits will be provided.

THE COURT: With those directions. Okay.

MR. BILOTT: Correct, your Honor.

THE COURT: All right. So if I understood it, one of the questions I had is why do you want me to modify my certification order to include individuals -- certify the class only as to the individuals as of the date of the class notice, and the answer is, is that because of the relief being sought here and the relief being given, it best serves those who are currently in their homes.

MR. BILOTT: Correct, your Honor.

THE COURT: Which makes a lot of sense.

Okay. Who wants to persuade me? Who wants to argue?

MR. BILOTT: Your Honor, I'll speak on behalf of plaintiffs first.

THE COURT: All right.

MR. BILOTT: Currently before the Court, as the Court has mentioned, we have two motions currently pending. One is to modify the class order to clarify the definition of who is in the class, and we've just addressed why we believe, your Honor, that makes sense and why that best ties with the relief that's being provided to the class members as well.

We also are asking for the Court to eliminate certification of the strict liability issue. As noted in the parties' joint motion, we don't believe that any of the class members give up anything by eliminating this issue, but it does greatly improve the class settlement agreement and

eliminates potential issues I believe the Court addressed last hearing about what effect having that issue released could have on future claims. So, we believe that clarification of the class definition and elimination of the strict liability issue makes sense and will assist in a smooth administration of the settlement agreement.

As far as the join motion for preliminary approval, I don't plan to go through all of the factors that we've addressed already in the briefing, but I do want to hit some of the issues before the Court. We do believe that this settlement presents a fair, reasonable and adequate settlement for the class and it's worthy of approval, preliminary approval. Under this agreement, DuPont will pay 8.3 million which will go toward providing a benefit to the class members in the form of an offered water treatment system for in-home use. And class counsel has spent a lot of time reviewing the available data, technical data, on the ability of various systems to treat drinking water for PFOA, the ability to remove or filter that water. And has also reviewed, and I don't believe we spent much time addressing this in the supplemental materials, which is why I want to mention it now, we did compare a variety of those systems and looked at what was the potential availability for a large number of those to be purchased on the open market and what were their costs. And the system that counsel selected to be offered to the

class members, we believe is one that is both widely available and is also one of the most reasonably priced. Not only for the original system, but for the replacement filters, and that is the system that we've outlined in our court papers, your Honor, the Culligan system.

THE COURT: I took it from the papers that it was more readily available so after five years or ten years, however long it will take to go through the filters, they could get additional filters in the market.

MR. BILOTT: Correct, your Honor. That was our understanding as well from the available information.

We also spoke with the individuals at the Minnesota Department of Health to make sure there hadn't been any changes or modifications to the report since it was issued or any developments with any of the providers of those systems that we should know about.

THE COURT: Mr. Bilott, that actually raises another question that I had. A member getting this notice may ask why Minnesota, and I thought it might be wise to say why Minnesota. And I took it to mean, well, there are very few studies on this and Minnesota was one of them that you felt comfortable with. But, do you think that they should be at least told why Minnesota? It just seems to kind of come out of thin air.

MR. BILOTT: Well, the reason, your Honor, why

Minnesota, Minnesota had experienced an issue with PFOA and other perfluoral chemicals in drinking water in that state in the 2005 to 2008 time frame as well. That state, their legislature authorized the funding of a study to look into the availability of these systems on a widespread basis because the state was having to fund a lot of these systems at the time. It's the only state, to our knowledge, that has funded such a study.

THE COURT: Well, something you might want to think about when we get to the notice, which I know you folks have asked me to look at, because one of the thoughts I had is that you may want to put in your notice why Minnesota. I mean, that seems like a perfectly legitimate reason to tell them, but it might send people looking at that scurrying for why are they looking at Minnesota? Isn't there anything in New Jersey? We're dealing with the common household member who doesn't have training, obviously, in these areas, so...

MR. BILOTT: One of the items that's also before the Court, your Honor ask a proposed communication from class counsel to the class.

THE COURT: Right.

MR. BILOTT: A separate letter that we intend to send out. We could propose to add a sentence there, your Honor.

THE COURT: Well, I'm sort of digressing here. Have you shared that with DuPont? Because you don't need to. I

took it that you had.

MR. BILOTT: Yes, they have been copied on it, your Honor.

THE COURT: Yes. And that certainly was of your own choosing. I've tried to be carefully throughout this litigation of not impinging on the attorney/client privilege. I've made it very clear that I don't have to approve these communications, but there have been some problems, which is why I had gotten involved the first time. But you've asked me to look at it.

So one of my recommendations to you would be I think you should put in there in a sentence or two why you chose Minnesota, either because, as you just said, it's a state that has performed more of an exhaustive study than other states, or something to that effect, otherwise I think you are going to get a lot of phone calls relating to that issue.

MR. BILOTT: Okay your Honor. I think we will add that sentence into the letter from class counsel to class members, your Honor.

THE COURT: Okay.

MR. BILOTT: But we do believe that this settlement provides a reasonable, adequate and fair benefit to the class members, all class members, that each household will be offered this water system and, as indicated in the settlement papers, those who may not want the system for whatever reason,

if they already have purchased their own system or don't want it for whatever other reason, they will be offered an incidental cash payment, incidental benefit that we believe is to the fullest extent we can, equivalent value to the water system. And what we have tried to do was figure out on a conservative basis what would be the approximate value of the system as proposed to the Court, and then whatever that ends up being, as we already indicated, your Honor, there will be a separate class administrator agreement submitted to the Court for approval which will lay out how the class administrator will calculate how many filters each household will receive, what the values of those will be, an equivalent value will be offered to those seeking the cash incidental option as well, your Honor. And we believe that this is a fair and adequate settlement for the class.

Again, all of those settlement funds will go into that one program for the common benefit that will be offered to everyone, the same benefit. The incidental payment will be also the same to anybody who offers or seeks that benefit, your Honor; it will not have to be calculated on any individual basis, there will be one uniform payment made.

THE COURT: Mr. Bilott, am I correct that if notice is going to go out to each household and that they have to fill out this form and the form says which system they are going to choose, the filter or the cash benefit, if they don't

respond they are bound by the terms of the settlement, right?

MR. BILOTT: Correct. Your Honor.

THE COURT: So I have two concerns. Shouldn't a second notice go out? I know the agreement talks about one notice, but we all throw out junk mail that we don't recognize and I think it seems to be a harsh, a harsh result if someone just inadvertently throws the first notice out or doesn't get it.

MR. BILOTT: All right.

THE COURT: We are relying heavily on the U.S. Postal Service.

MR. BILOTT: Your Honor, I believe the way we envision this is that there will be a class notice going out after. If there is preliminary approval, a notice will go to the class members in the form that's been attached to the settlement papers explaining how this will work.

THE COURT: Right.

MR. BILOTT: If the settlement is approved, there will then be a claim form that goes out to all of these households. The class administrator will handle submission of that claim form to all the households. So in effect, they are getting a second notification of the benefits, your Honor.

And I'm reminded, your Honor, by counsel that we are also -- the way we've set this up, I think I now understand what the Court was getting at as far as the original class

notice, there will be a notice in the form that's attached to the settlement papers. That's the official class notice. Class counsel is sending a second letter to all of the class members in the form that we've also submitted to the Court that we've just discussed a few moments ago. So they will be getting two separate mailings, your Honor.

THE COURT: I don't remember the notice, does it lay out in bold -- if you don't fill out this form, does it advise them of the consequences? I want to make sure we take a look at that.

MR. BILOTT: Your Honor, the notice is attached to -- let me find it here -- the declaration of Roy Cohen, which is before the Court as Exhibit A --

THE COURT: Who is not here today.

MR. BILOTT: As Exhibit A, which is the class settlement agreement, and attached to the class settlement agreement at Exhibit 4 --

THE COURT: Hold on.

MR. BILOTT: -- is the proposed form of notice.

THE COURT: Let me get it. Where is it?

MR. BILOTT: It's Exhibit 4 --

THE COURT: Of Mr. Cohen's?

MR. BILOTT: -- to Exhibit A of Mr. Cohen's declaration.

THE COURT: Okay. Does it say --

MR. BILOTT: On page 6, your Honor, there is a subparagraph which is kind of set up as a question. Question number 16, what happens --

THE COURT: When are they getting this? This is the first communication?

MR. BILOTT: This is the first notice, your Honor.

THE COURT: The second communication is what?

MR. BILOTT: The second communication will be the letter that we've submitted to the Court that comes from class counsel.

THE COURT: Okay.

MR. BILOTT: We can add that same exact language in that second letter as well, your Honor.

THE COURT: Yes.

MR. BILOTT: We will do that, your Honor.

THE COURT: Okay. Now where is that language?

MR. BILOTT: On page 6 of Exhibit 4 after question number 16.

THE COURT: "What happens if I do nothing at all?" Okay, let's see. Okay, I want that in bold. "You must submit a timely valid claim form or you will not receive any class benefits." I want that in bold and caps.

MR. BILOTT: Okay. So for just for clarification, all of the text under number 16 you would like to be bold and all caps, correct, your Honor?

THE COURT: Well, I want "You must submit a timely valid claim form," this is what I want, "or you will not receive any class benefits." That has to be in bold and caps.

MR. BILOTT: Okay.

THE COURT: "Or you will not receive any class benefits." "If you do not opt out --" let me just read this again. And then I think to be consistent, "you will not get a class benefit."

MR. BILOTT: Okay. So the phrase, your Honor, in the third line down that begins after the comma, "if you do nothing - you will not get a class benefit." You want that all capped and boldfaced?

THE COURT: Yes, yes.

MR. BILOTT: All right.

THE COURT: And then here's what I want capped and bolded. In the first sentence I want this capped and bolded: "You must submit a timely valid claim form or you will not receive any class benefits." And in the second sentence what I want in caps and bolded, "if you do nothing, you will not get a class benefit."

MR. BILOTT: All right.

THE COURT: And somehow this language should be incorporated in the second, in the communication by counsel.

MR. BILOTT: Okay.

THE COURT: Okay?

MR. BILOTT: Understood.

THE COURT: Then I'm more satisfied that anyone receiving the correspondence understands the implications of doing nothing. Okay?

MR. BILOTT: Okay.

THE COURT: What happens if a significant number of households do nothing? Does that mean that the few that responded, and assuming the 5 percent isn't -- more than 5 percent don't opt out and DuPont declares the agreement null and void, does that mean that the few that wanted the water system gets a water system for the next 200 years?

MR. BILOTT: Your Honor --

THE COURT: It's probably unrealistic, isn't it? But, nonetheless, it's a question I need to ask.

MR. BILOTT: In that situation, the class members who did submit the claim forms and did choose the water option as you just described, would get the number of filters that corresponds to that amount that's in the settlement fund. We believe --

THE COURT: Well, in any event, that would become more of an issue that I could consider at the final hearing, couldn't I?

MR. BILOTT: Yes. Correct, your Honor.

THE COURT: Yes, okay.

Mr. Johnson, do you want to be heard?

MR. JOHNSON: Your Honor, we really have nothing to add to that. I'm happy to answer questions, if the Court has any.

MR. BILOTT: The only other thing I did want to point out, your Honor, was on the class notice, Exhibit 4, that we were just looking at we also would like to change one word on page 4 under the option one where we're talking about the class filter option. We had mentioned -- we used the phrase "a $200 check." And to be consistent with what we described in our supplemental filing about the way those costs would be calculated, we believe that should say "an approximately $200 check" just in case some of the money needs to be allocated, as we described in the supplemental filing, toward the check that goes toward installation costs.

THE COURT: Well, you can't say it that way because this check is to cover expenses relating to installation. So they're all getting a $200 check regardless of whether or not there is money left over. No?

MR. BILOTT: Correct, your Honor. But if you recall in the supplemental filing the way we described how the benefits would be divided equally among the class members, if there was an unequal amount of money left over at the end, there wasn't quite enough to pay for one more filter system for the people that were choosing the filter, in order to allocate that money equally to among the class members that

would be put onto the $200 installation check.

THE COURT: Don't you think it should be more like "at least a $200 check?" Because they're not going to get $188.

MR. BILOTT: Correct, your Honor. It would be at least 200. We just wanted to make it clear that --

THE COURT: How about "at a minimum a $200 check?"

MR. BILOTT: That's fine.

THE COURT: I think by saying "approximately" they're thinking, well, maybe 150, it might be -- what do you folks think?

MR. BILOTT: "At least" would be fine with us, your Honor.

THE COURT: Mr. Johnson, what do you think?

MR. JOHNSON: We have no objection to that, your Honor.

THE COURT: "At least."

MR. JOHNSON: Yes, your Honor.

MR. BILOTT: We just didn't want it to be as definite as it sounded in here.

THE COURT: Or "at minimum," whatever language. That's what lawyers get paid for. "At a minimum," "at least," whatever. Okay.

I had asked you a question, Mr. Bilott, about whether or not the class members had been told that they were putative

class members as of October 9, 2009. You said no. My same question applies to whether or not they were told that the strict liability issue was something that was going to be litigated? It's the same question. I assume the answer is no?

MR. BILOTT: Correct, your Honor.

THE COURT: All right. This matter comes before me upon a joint notice of motion for preliminary approval of a class action settlement. The parties seek preliminary approval of this settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. "A class action cannot be settled without the approval of the Court and a determination that the proposed settlement is fair, reasonable and adequate. *In Re Pet Foods Products Liability Litigation*, 629 F.3d 333 at 349 (3d Cir. 2010). Under Rule 23(e), the trial judge bears the important responsibility of protecting the absent class members, "which is executed by the Court's assuring that the settlement represents adequate compensation for the release of the class claims." *In re General Motors Corporation*, 55 F.3d 768 at 805 (3d Cir. 1995). *See also Ehrheart v. Verizon Wireless*, 609 F.3d 590 at 593 (3d Cir. 2010) wherein the Court held that the purpose of Rule 23(e) is to protect the unnamed members of the class.

The requirement that a district court review and approve a class action settlement before it binds all the

class members does not affect the binding nature of the parties' underlying agreement. Put another way, judicial approval of a class action settlement is a condition subsequent to the contract and does not affect the legality of the proposed settlement agreements. *Ehrheart* 609 F.3d 590 (3d Cir. 2010).

The Third Circuit has identified nine factors that have to be considered in determining the fairness of a proposed settlement. These have been commonly referred to as the *Girsh* factors stemming from the Third Circuit's decision in *Girsh v. Jepson*, 521 F.2d 153 at 157 (3d Cir. 1975). The Third Circuit has also identified additional factors called the *Prudential* factors identified by the Third Circuit in *In re Prudential* 148 F.3d at 323.

The first factor that the Court must consider is the complexity, expense and likely duration of the litigation.

This is a case that the Court has been involved in quite intimately for several years. For more than four years the parties have litigated this very complex case. This is a case that involves complex tort claims in both Rowe and Scott. The parties have engaged in extensive discovery and motion practice. As the parties recognize, more than three million pages of documents have been exchanged; over 50 depositions extending across the country have taken place; dozens of interrogatories, requests for production and requests for

admission have resulted. In addition, the parties have identified more than two dozen expert witnesses in numerous disciplines in support of their claims or defenses. Clearly, complex scientific and legal issues have pervaded this litigation. Opinions from, as I indicated two dozen experts have ranged widely from toxicology to epidemiology to chemical fate and transport.

The Court has spent considerable judicial resources with this case and if this case were not to settle or to go to trial, much more resources would be expended, time and expenses, and that doesn't include potential appeals to the Third Circuit, all saying to this Court that it would be very time consuming, expensive and difficult. So I find that this factor favors preliminary approval of the settlement.

The reaction of the class to the settlement is not a factor at this preliminary stage, it will become relevant after the class members have received notice and an opportunity to object or opt out.

The third factor is the stage of the proceedings and the amount of the discovery completed. I have already alluded to that, but this factor captures the degree of case development that class counsel have accomplished prior to settlement. *In re Cendant*, 264 F.3d at 201 (3d Cir. 2001). It allows the Court to determine whether counsel had an adequate appreciation of the matters of the case before

negotiating. There can be no question, given the extent of this litigation, that counsel have clearly had more than an adequate opportunity to appreciate the merits of the case. The class representatives and members have been represented by experienced class counsel, who have thoroughly evaluated the likelihood of the claims and their success. The parties have briefed dispositive motions and those motions have been pending before the Court. As such, counsel are well positioned to evaluate the likelihood of success should the litigation proceed.

The same is true for DuPont. They've been represented by experienced counsel throughout this litigation; they understand the time and expense of continued litigation and what a trial would mean in this case, what an appeal might bring. In all, each party has had more than an adequate opportunity to evaluate these issues with experienced counsel. So this is a factor that weighs in favor of approving the settlement.

The fourth factor, the risk of establishing liability. DuPont has vigorously disputed liability in this case; it has moved for summary judgment on all counts, it has moved to exclude the opinions and testimony of the plaintiffs' key experts, and it has challenged this Court's certification of certain claims. As a result, class representatives face significant and potentially meritorious defenses based on the

facts and the law if this case were to proceed to trial. Because this Court has not yet ruled on any of the dispositive or expert motions, the class representatives face considerable risk as to their ability to establish liability. As I mentioned, regardless of which party prevails after conclusion of this complex trial, appeal seems almost certain. This consideration weighs in favor of approving the settlement because the settlement will guarantee tangible and immediate benefit to the class members and a final disposition of the case, thereby putting aside these challenges that I have just al luded to.

The fifth factor, the risk of establishing damages, is not a factor that applies to this case because it is a (b)(2) class. Although there is some monetary relief that may be provided to class members, that is incidental, as I will cover in a moment.

The sixth factor, the risk of maintaining the class action through the trial. This factor requires the Court to consider whether there is a significant risk that the class will not be maintainable through the course of the trial and there is a risk of class decertification. DuPont has contended that this Court improperly certified both the Rowe and Scott classes and DuPont will maintain its defenses to class certification. Of course, there is never a guarantee that the classes will remain certified throughout the balance

of this litigation.

Let me pause here for a second, because, Mr. Johnson, DuPont has contended that significant facts have developed sense I have certified this class that would affect or could affect certification and DuPont continues to maintain that.

MR. JOHNSON: Yes, your Honor.

THE COURT: Yes. Can you tell me what those are?

MR. JOHNSON: Yes, your Honor. Since this case was filed, there have been a number of scientific studies and we think that the bulk of the scientific research that's been done since the case was filed would indicate there is no cause for concern here, and that's the evidence we intended to present to your Honor, and did present in some of the motions we've filed.

THE COURT: So, as Mr. Johnson has set forth and as the papers that have been filed with the Court indicate, this is an area that is not a certain area, as Mr. Johnson just highlighted for the Court. There have been a number of scientific studies that DuPont would present that DuPont would attempt to persuade a jury that there is no valid cause of action here, given the conclusions of those scientific studies. Of course, plaintiffs would oppose that.

But in any event, given the information before the Court, those scientific studies might result in, depending upon what the level of PFOA is in each resident's water, and

as a result the class definition might change. That's how I have understood this argument.

Am I correct about that, counsel?

MR. JOHNSON: Yes, your Honor.

THE COURT: So that given that, there would be a risk or there could be a risk that the definition of the class might change. So given that, that is *Girsh* factor that weighs in favor of approving the settlement.

The seventh factor under *Girsh* is the ability of the defendants to withstand a greater judgment. This is not a claim that involves damages claims, so it's not a factor relevant to this case.

The eighth and ninth factors are the range of reasonableness of the settlement in light of the best recovery and the range of reasonableness of the settlement in light of all the attendant risks of litigation. These factors are used to evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case. The Court should consider whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial. *In re Prudential*, 148 F.3d 283 at 322 (3d Cir. 1998).

As I've indicated, the parties already have expended considerable time and resources on this litigation and the investment that they will have to maintain in these actions

going forward is significant. DuPont has vigorously contested both certification and liability and is committed to defending the claims against it through an appeal, if these cases do not settle. There is no doubt here that settlement provides real valuable and immediate benefit to the class members. The Court finds the settlement terms to be an adequate, fair and reasonable compromise of their claims for injunctive relief, and which are sufficiently related to the injunctive relief sought. It seems to the Court that while the plaintiff may secure a victory at trial, and there is a risk that the plaintiffs may not, but if the plaintiffs were to secure a victory that might result in some additional or alternative relief for class members, the proposed settlement certainly provides guaranteed benefits, and guaranteed benefits sooner. I find that even though the settlement does not provide all of the benefits that the class representatives initially sought in their lawsuits, full compensation is not a prerequisite. What is a prerequisite is that I find that the settlement is adequate, fair and reasonable compensation for the release of the class claims. And for the reasons I have just stated, I do find that the certainty of that class benefit is a weighed against the risk and time involved in seeing this case through trial and through an appeal. So those factors I find support approval of the settlement.

District courts must make findings as to the

Prudential factors, where appropriate. *In re Pet Food*, 629 F.3d at 350. I will briefly comment on the factors relevant here.

The maturity of the underlying substantive issues as measured by experience and adjudicating individual actions. I've already alluded to that, that these claims have been litigated and have been presented and all parties have had the benefit of discovery. So clearly, both parties have entered into this settlement knowing what the substantive issues are.

The development of scientific knowledge. Again, both parties know what is out there, they know what the scientific evidence is. As has been pointed out, it is something that the parties feel the settlement adequately addresses, given the state of the science.

The extent of the discovery on the merits and other factors that bear on the ability to assess the probable outcome of a trial and the merits of liability and individual damages. I have already discussed that.

The existence of the probable outcome of claims by other classes and subclasses I feel I have adequately addressed. The settlement provides certainty that a risk of going forward on other claims does not.

The comparison between the results achieved by the settlement for individual class or subclass members and the results achieved, or likely to be achieved for other

claimants.

Whether class or subclass members are accorded the right to opt out of the settlement. In this case, though, while required, the settlement agreement does provide the ability to opt out of the settlement. So that is a factor that certainly weighs in favor of approving the class.

Any provisions for attorneys fees are reasonable. In this case, if this Court were to preliminarily approve the settlement, class counsel will file a petition seeking an award of reasonable attorneys' fees and expenses incurred in connection with their representation of the class members in the actions. That petition will lay out in detail the services rendered and the expenses incurred; it will be available for all class members to review and the Court will review it sufficiently in advance of the final fairness hearing. So there will be an opportunity for this Court, as well as class members, to review them and an opportunity for this Court to determine the reasonableness of the fees.

One of the issues that I have to also address is whether or not the class benefits is a fair and reasonable compromise of the claims for (b)(2) injunctive relief. The settlement agreement addresses two situations. One is the filter option, where the class member households may elect to obtain a filter system that the parties have researched and I am persuaded have engaged in a diligent analysis based upon

the declarations submitted to me that the filter system that they have researched is one that has been sufficiently tested, in particular by the Minnesota Department of Health, for PFOA removal, and that this option will include providing the homeowners with filters that could last up to ten years, but certainly five years at a minimum, but up to ten years. It provides technical assistance for customers who may need assistance in installing. It also provides a $200 check for those who may have to hire someone to install the services for them. And because the parties have recognized that there may be some class members who prefer not to request the filter option for a number of reasons, they drink bottled water or they already have a filter system, the settlement agreement takes that into consideration and offers what is called an incidental payment option. I had asked, and am persuaded, that that incidental payment option represents the approximate total value of the water filter package with ten replacement cartridges.

So one of the questions that, of course, is raised is that this is a (b)(2) class. Why that is important is because class actions certified under (b)(2) are limited to those cases where the primary relief sought is injunctive or declaratory relief, but just because there is an incidental payment option, for example, does not necessarily mean that this is not in conformity with a (b)(2) class. It is. I find

that the incidental payment option is an incidental damage that flows directly from liability to the class as a whole on the claim that forms the basis of the injunctive relief. So I do find that for reasons that the parties have submitted in their brief to me that this is incidental to the injunctive relief.

The other issue that I need to address is the parties have asked in connection with the motion for preliminary approval is that I modify my class certification order. In my October 9, 2009, class certification order I had certified two Rule 23(b)(2) nuisance classes for injunctive relief and a Rule 23(c)(4) strict liability class issue.

With respect to my (b)(2) certification, I had certified that all individuals who as of October 9, 2009, have an ownership interest in a private well within a two mile radius of DuPont's Chambers Works plant, which supplies drinking water containing PFOA. In the Scott case, I had certified all individuals who as of October 9, 2009, are residential water customers of Penns Grove Water System who have an ownership interest in, meaning own or lease, their real property served by PGWS which supplies drinking water containing PFOA. I also certified the issue under Rule 23(c)(4) which was whether DuPont's release of PFOA constitutes an abnormally dangerous activity.

So the parties have asked that I reassess my ruling

and modify my ruling and I am permitted to do that. See, e.g., *Lindsey v. Memphis-Shelby County Airport Authority.* 2000 WL 1182446, (6th Cir. 2000); *Phillips v. Philadelphia Housing Authority*, 2005 WL 1025151 (E.D. Pa. 2005); *In re Lloyds American Trust Fund Litigation* 2002 WL 31663577 (S.D.N.Y 2002).

Here, the parties have asked that I amend my order to modify the class definition and to eliminate the strict liability issue. They have asked that I modify my certification so that it embraces not individuals who as of October 9th had an ownership interest in real property served by PGWS or containing a private well within a two mile radius of the DuPont Chambers Works plant, but to certify it as of the date of the class notice so that the certification would be as to any individual who as of the date of class notice of the settlement has an ownership interest, meaning owns or leases in and occupies a residence located within two miles of Chambers Works plant that has a private well for drinking water that contains PFOA; and in the Scott case, any individual who as of the date of class notice of the settlement has an ownership interest, meaning owns or leases in or occupies a residence with drinking water supplied by the Penns Grove Water System.

So I think not only in terms of facilitating this settlement agreement but in terms of really what makes sense

here, that the Court will modify its certification. The relief that's being sought here is injunctive relief and so it certainly makes more sense that the injunctive relief is being provided to those individuals who are currently affected, and that would be those who have an ownership interest as I've just laid out, etcetera, as of the date of the class notice. So that does make more sense. Any individual who may have owned or leased property at the time who no longer would be covered because they no longer reside there is not barred from seeking any recovery against DuPont for whatever damages or relief they would seek.

The same is true for the strict liability issue. At this juncture, it would not seem to make any sense to continue the strict liability issue. Certainly, if I were to get rid of that issue, it would simplify the settlement and as the parties correctly point out, class members don't lose anything, they retain the ability to seek damages or other relief on the basis of a strict liability theory, or any other tort theory. They just will have to pursue their claims individually if they were to pursue such actions. So I will grant that motion and modify my certification order.

Going back to the *Prudential* and *Girsh* factors, one other factor that weighs in favor of approving the settlement is that to the extent there are any other individual claims against DuPont, the parties have represented that those

plaintiffs who have asserted individual claims against DuPont, those claims are being handled individually and apparently are being settled separately.

Let me address the opt out issue. As I mentioned earlier, Rule 23(b)(2) does not permit class members an absolute right to the opt out of the action, but the Third Circuit has recognized, where appropriate, that courts should consider whether class or subclass members are accorded the right to opt out of a settlement when assessing the fairness of a settlement. And that's in the *Prudential* case, 148 F.3d 283 at 323 (3d Cir. 1998).

As I have mentioned, I find that I do have the discretion to permit them and I do find the fact that this settlement agreement does permit an opt out inures to the fairness of the settlement agreement. I find the fact that the parties have provided a class member the right to opt out of the settlement is a factor that weighs in favor of approving the settlement.

The notice issue, which is what I must also look to, Rule 23(e) (1) requires that the Court direct notice of the settlement in a reasonable manner to all class members who would be bound by the proposal, and here the parties have agreed to provide individual notice not once but actually at least twice. So I'm satisfied that that factor has or will be met.

I don't think that I have failed to address any other factors. Is there anything I failed to address, Mr. Bilott?

MR. BILOTT: No, your Honor.

THE COURT: Mr. Johnson?

MR. JOHNSON: No, your Honor.

THE COURT: All right. So given all of those findings, I will grant the motion for preliminary approval of the settlement. I will modify the certification order and direct the notice. Now, do I have a proposed order?

MR. BILOTT: Yes, your Honor. It's Exhibit 1 attached to that same Exhibit A to Mr. Cohen's declaration as a proposed preliminary approval order.

THE COURT: Do you have an original?

MR. BILOTT: I have one I can provide to the Court.

THE COURT: So it doesn't have the --

MR. BILOTT: May I approach?

THE COURT: Yes.

I also have come comments on the notice. I have it.

(Short Pause)

We need to talk about dates. Before we do that, I did have some additional comments on the notice, Mr. Bilott. Maybe I took care of them. Let me see. Not the notice, the correspondence. No, all of my questions I've addressed, but you may want to make the same change on your -- you are going to make additional changes as we've talked about, but on the

letter you may want to make the same change for that $200.

MR. BILOTT: Correct, your Honor.

THE COURT: When should the fairness hearing take place? How far out? Let's talk about that and then I'll give you a date. Did anybody figure that out, how much time out?

MR. BILOTT: No, I don't believe we have actually discussed, your Honor, what the precise date would be. It obviously depends on the Court's schedule, but a lot of it is going to depend on how much time the Court sets for getting the notice out and allowing for the objections.

THE COURT: Well, you want to work backwards? How much time do you need to send the notice out?

MR. BILOTT: Probably within a week.

THE COURT: Okay. So, let's just sketch it out. Would you be ready to do all the notice on March 28th or do you want more time? Should I make it April 4th?

MR. BILOTT: April 4th, your Honor.

THE COURT: I'd rather give you more time than not enough. So notices go out on April 4th, let's just say, and then the proposal is that objections and opt outs must be postmarked no later than 50 days. So that would give them -- the proposal was 50 days from today.

MR. BILOTT: Correct, your Honor.

THE COURT: But the notices aren't going out for -- they should at least have a month. So, let's see. Shall we

say May 9th?

MR. BILOTT: Okay.

THE COURT: May 9th would be objections, opt outs. Then you'll need time to organize all of that. So the fairness hearing is June 14th. Motion for final approval and the petition for fees would need to be filed by May 24th. That will give you about two weeks after you've received any objections. So is that enough?

MR. BILOTT: Yes, your Honor.

THE COURT: Okay. The fairness hearing, you all do a bunch of travelling, shall I do it later in the day? Does that make any difference to you all?

MR. JOHNSON: Your Honor, morning is fine with us.

THE COURT: Okay.

MR. JOHNSON: I don't trust the airlines enough to try and get up here the same day.

MR. BILOTT: Same, your Honor.

THE COURT: All right. So let me look at the order again.

Could you folks just take a look at this?

MR. JOHNSON: Your Honor, this looks fine.

THE COURT: Okay.

(Short pause)

MR. BILOTT: Your Honor, it also looks fine to plaintiffs with the exception I just discussed with DuPont's

counsel. I believe on page seven there is a blank for the opt out deadline.

THE COURT: Oh, did I miss that?

MR. BILOTT: Yes. I believe it would be May 9th.

THE COURT: So the deadline for the objections and the opt outs are both the same?

MR. JOHNSON: Yes, your Honor.

MR. BILOTT: Correct.

THE COURT: And that's fine, right?

MR. BILOTT: Yes.

THE COURT: So my Deputy Clerk will have the headings redacted and then this will get filed in both cases.

I wish to compliment counsel for all of their very hard work on this case. It has been a long road. So we shall await the fairness hearing and I'll see you all in June.

MR. JOHNSON: Thank you, your Honor.

MR. BILOTT: Thank you, your Honor.

(Court adjourned at 11:30 a.m.)

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Catherine A. Lawrence, hereby declare the following:

1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.

Catherine A. Lawrence

[1] All capitalized terms shall have the meaning assigned in the Class Settlement Agreement.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Kathleen K. Lemke, hereby declare the following:

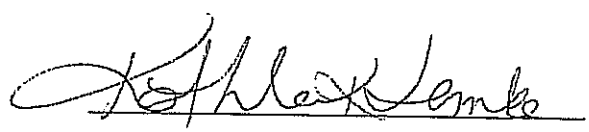
1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Allen K. Moore, hereby declare the following:

1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.

Alla K Moore

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Richard Rowe, hereby declare the following:

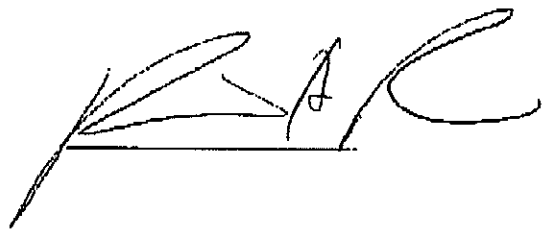
1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Misty Scott, hereby declare the following:

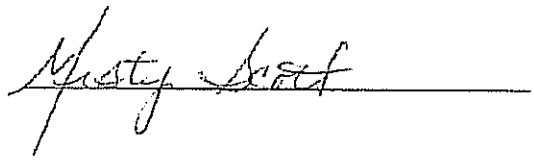
1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

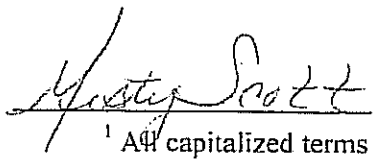
2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.





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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

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MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Michele E. Tomarchio, hereby declare the following:

1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.

Noelle E. Tomacko

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

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AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Regina M. Trout, hereby declare the following:

1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.

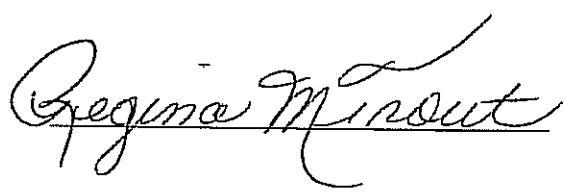

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Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Catherine A. Lawrence, hereby declare the following:

1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.

Catherine A. Lawrence

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
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AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Kathleen K. Lemke, hereby declare the following:

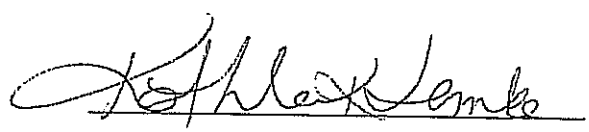
1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.



[1] All capitalized terms shall have the meaning assigned in the Class Settlement Agreement.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Allen K. Moore, hereby declare the following:

1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.

Alla K Moore

[1] All capitalized terms shall have the meaning assigned in the Class Settlement Agreement.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Richard Rowe, hereby declare the following:

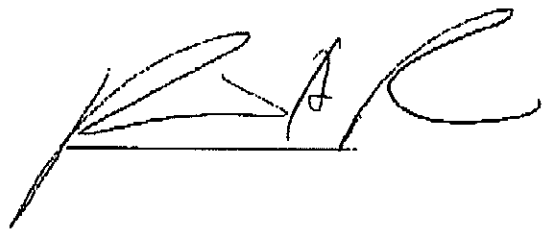
1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Misty Scott, hereby declare the following:

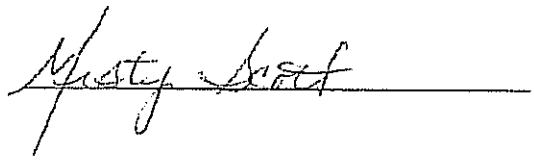
1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

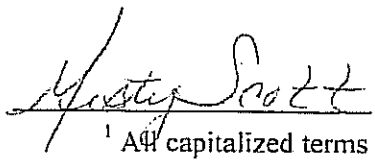
2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.





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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Michele E. Tomarchio, hereby declare the following:

1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.

Noelle E. Tomacko

[1] All capitalized terms shall have the meaning assigned in the Class Settlement Agreement.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

AGREEMENT TO PARTICIPATE IN PROPOSED CLASS ACTION SETTLEMENT

I, Regina M. Trout, hereby declare the following:

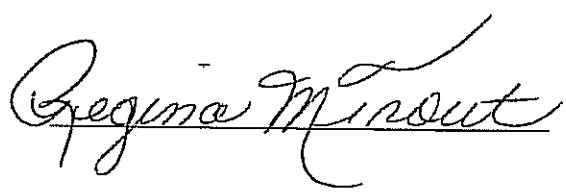
1. I am a Class Representative in one of the class action lawsuits listed above and have been an active participant in this litigation on behalf of the Class Members.[1]

2. I am aware that my lawyers and Counsel for DuPont have agreed upon a proposed class settlement that would settle all Class Claims.

3. I understand that my lawyers and Counsel for DuPont have agreed upon terms of this class settlement after arm's-length negotiations.

4. In my capacity as Class Representative, I have discussed the terms of the proposed class settlement with my lawyers. Based upon my own judgment, belief, and knowledge, and taking into account the advice and recommendations of my lawyers, I believe that the terms of the proposed class settlement are fair, adequate, and reasonable and provide benefits to the Class Members.

5. In my capacity as Class Representative, I approve the terms of the proposed class settlement and agree to participate in the settlement of the Class Claims, if approved by the Court.



[1] All capitalized terms shall have the meaning assigned in the Class Settlement Agreement.

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, ET AL., individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT, APPROVING FEES AND EXPENSES, APPROVING APPOINTMENT OF CLASS ADMINSTRATOR AND DIRECTING ENTRY OF FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE

Plaintiffs Richard A. Rowe, Michelle E. Tomarchio, Regina M. Trout, Allen K. Moore, Catherine A Lawrence and Misty Scott and Defendant E.I. du Pont de Nemours and Company ("DuPont") jointly moved the Court for final approval of the proposed Class Settlement

Agreement ("Settlement Agreement") and appointment of a Class Administrator. Additionally, Class Counsel[1] has petitioned for an award of fees and expenses.

On March 22, 2011, this Court entered the Preliminary Approval Order in the Actions, preliminarily approving the terms of the class action settlement as set forth in the Settlement Agreement. On June 14, 2011, this Court conducted a Fairness Hearing to: (a) determine whether the proposed settlement and the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate and should be finally approved by the Court; (b) determine whether final judgment should be entered in the Actions pursuant to the Settlement Agreement; (c) entertain objections from Class Members or any other person(s) as to the proposed settlement or any other matter related thereto; (d) consider Class Counsel's petition for an award of attorneys fees and reimbursement of expenses; (e) determine whether the proposed Class Administrator should be appointed, and (f) rule on any other matter pertaining to the proposed settlement.

The Court determines that the two notices provided to Class Members fully complied with all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and the Notice Plan that this Court approved in the Preliminary Approval Order. Class Members were notified of the hearing to address the fairness of the proposed settlement and were given an opportunity to appear and to voice objections to the settlement. Based on the thousands of notices sent to class members, only 27 Class Members opted out of the settlement and no Class Member[2] submitted an objection to the settlement. The Court also received and considered

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[1] Except where specifically stated to the contrary, all capitalized terms shall have the meaning assigned in the Settlement Agreement.

[2] Three purported "objection" letters were submitted but none were on behalf of any Class Members. Two letters were on behalf of persons outside the class definition and therefore not members of the class. The third was submitted on behalf of a person who opted out of the settlement so is also no longer a Class Member.

arguments and evidence from the attorneys for the respective Parties in connection with the proposed compromise and settlement of the Actions and the award of Class Counsel's attorneys fees and expenses and gave all persons requesting to be heard an opportunity to be heard in accordance with the procedure set forth in the Preliminary Approval Order. The Court also considered all the written arguments filed in this matter. Based on the oral and written arguments and evidence presented in connection with the motions, the Court makes the following FINDINGS:

A. The consideration/benefit to be given to Class Members under the terms of the Settlement Agreement is reasonable in light of the strengths and weaknesses of the Class Members' certified Class Claims.

B. The Settlement Agreement is fair, adequate, and reasonable and in the best interests of the Class for the various reasons set forth in the record of the March 22, 2011, preliminary approval hearing, and as set forth in the record during the June 14, 2011, final fairness hearing, considering each of the factors identified in *Girsh v. Jepson,* 521 F.2d 153, 157 (3d Cir. 1975) and *In re Prudential,* 148 F.3d at 323, including:

1. This litigation has been highly complex and of lengthy duration, spanning more than five years;

2. The reaction of the Classes to the Settlement has been overwhelmingly positive, with less than 0.3 % of Class Members opting out and no Class Member objections to any aspect of the Settlement;

3. The Settlement was reached at an advanced stage in the proceedings, after more than four years of active, contested litigation, including briefing of dispositive/*Daubert* motions and final trial preparation activities;

4. The Classes faced considerable risks to their ability to establish liability and, regardless of which party prevailed at trial, appeal was likely;

5. The risk of maintaining certification of the Classes through trial was significant;

6. The Settlement provides a significant benefit to the Classes now that is reasonable in light of the attendant risks of continuing the litigation;

7. Given the advanced stage of the litigation, the underlying issues were sufficiently mature to support reasoned evaluation of the settlement;

8. Both sides were sufficiently aware and apprised of the development of relevant scientific knowledge to adequately inform the settlement decision;

9. The Parties had adequately investigated the merits of the claims through extensive discovery and had an ability to properly assess the probable outcome of the Class Claims at trial; and

10. Class Members were provided opt-out rights under the Settlement and court-approved Notice Plan.

C. The Classes have at all times, including during the negotiation of the Settlement Agreement and its presentation to the Court, been represented by competent counsel. Class Counsel has recommended to the Court that the Settlement Agreement be approved. Class Counsel has exercised skill and experience in representing the Class, and their work has resulted in a substantial benefit to the Class. The Settlement Agreement provides for the payment of attorneys fees to Class Counsel, plus costs reasonably incurred in prosecution of this action, and Class Counsel has applied for an award of fees of $2,766,390 and reasonably incurred costs in the amount of $886,224.27. The Court has considered Class Counsel's petition for attorneys' fees and costs and hereby enters supplemental findings of fact and conclusions of law pertaining

to Class Counsel's motion. Class Counsel's fees and expenses shall be paid by the Class Administrator exclusively from the Settlement Amount pursuant to the Settlement Agreement.

D. Notice of the Settlement Agreement has been mailed in accordance with this Court's Order Preliminarily Approving Settlement and the Notice Plan contained therein. The notice given in the manner specified in that order provided the best notice practicable under the circumstances, and was reasonably calculated to communicate actual notice of the litigation and the proposed settlement to Class Members. The Court finds that the notice which has been given is consistent with and satisfies the due process rights of Class Members.

E. The Court finds that the Settlement Agreement was the result of arms length negotiation, was entered into in good faith by the Parties, and was not the product of fraud or collusion.

F. Class Counsel request that the Court award attorneys' fees in the amount of 33.33% of the Settlement Amount, or $2,766,390. Class Counsel also seek reimbursement of $886,224.27in litigation expenses from the Settlement Amount. The Court finds that this award is reasonable under the circumstances, based on applicable caselaw and the written submissions and oral argument of Class Counsel. *In re Rite-Aid Corp. Sec. Litig.,* 396 F.3d 294, 301 (3d Cir. 2005); *Dewey v. Volkswagen of America,* 728 F.Supp.2d 546, 592 (D.N.J. 2010).

1. There are two methods considered acceptable in the Third Circuit for evaluating the reasonableness of a fee request and determining the appropriate amount of a fee award (the lodestar method and the percentage-of-recovery method). Courts typically employ the percentage-of-recovery method in common fund cases, such as the present litigation, where the fees are to be deducted directly from the settlement fund being established for the class. With either method, the goal is make sure that counsel are fairly compensated for the

amount of work done and the results achieved. In this matter, the Court finds that awarding a percentage-of-recovery fee in the amount of 33.33% of the Settlement Amount is the better choice and is reasonable based on the following factors:

1. The Settlement fund is $8.3 million and benefits approximately 10,000 Class Members;

2. Less than 0.3% of estimated Class Members opted-out of the Settlement and there were no objections to either the Settlement terms of Class Counsel's requested fees/expenses from any Class Member;

3. Class Counsel were adequately skilled and efficient in pursuing the Class Members' Class Claims;

4. The litigation was highly complex and lengthy in duration, spanning more than five years;

5. Class Counsel undertook the litigation on behalf of the Class Members on a contingent fee basis and advanced almost $900,000 in expenses for the Class Members' benefit with the significant risk of non-payment;

6. Class Counsel collectively spent over 20,000 hours over five years on the Class Claims in this litigation;

7. The 33.33% fee requested in this litigation is well within the range of fees awarded in similar cases of similar complexity, duration, and risk; and

8. The fee requested by Class Counsel here is less than half the normal billable value of the time spent by Class Counsel on the Class Claims, yielding a lodestar of only approximately 0.41, which is well below the lodestar typically awarded in similar cases of similar complexity, duration, and risk.

The Court further finds that awarding the $886,224.27 in class-related expenses requested by Class Counsel is reasonable and appropriate, because those class-related expenses are adequately documented, reasonable, and recoverable, based on the detailed submissions and oral argument of Class Counsel, including lengthy declarations from each Class Counsel firm with detailed backup and explanation as to how and why the various categories of claimed expenses were incurred for the benefit of the Classes, which exclude costs/expenses incurred solely in connection with the pursuit of any individual plaintiff's non-Class Claims or in connection with submission of Class Counsel's fee/expense petition

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court appoints Edgar Gentle as the Class Administrator. All fees and expenses of the Class Administrator shall be paid exclusively from the Settlement Amount, pursuant to the terms of the Settlement Agreement and the Class Administrator Agreement.

2. After considering the factors governing judicial approval of the proposed class settlement under Rule 23(e) and other applicable law, the Settlement Agreement, the terms of which are incorporated herein by reference, is hereby approved as fair, adequate and reasonable and in the best interests of the Class Members. Class Representatives, Class Counsel, and DuPont have agreed to the language in this Final Order.

3. Each of the Class Members identified on the list attached hereto at Exhibit A have voluntarily opted out of the Settlement and are hereby excluded from the Settlement and shall not be included within the definition of the Class Members under the Settlement or this Order;

4. The Class Administrator's payment to Class Counsel of $2,766,390 for attorneys' fees and reasonably incurred costs of $886,224.27 from the Settlement Amount, pursuant to the

terms of the Settlement Agreement, is hereby approved. Such payments shall be made as specified in the Settlement Agreement and Class Administrator Agreement.

5. Any dispute concerning the aggregate amount or allocation of Class Counsel's fee and expense award shall be subject to the exclusive jurisdiction of this Court and shall be a separate and severable matter from all other matters in this Final Judgment and the finality and fairness of the Settlement Agreement with the Class Members. Any appeal of the Class Counsel attorney's fees and expense award shall be severed from this Final Judgment and shall not affect the finality of this judgment as to the settlement and release of the Class Members' claims against the Released Parties.

6. The attorneys' fees, costs, and expense payment from the Settlement Amount described in Paragraph 4 above is the total amount that will be paid by DuPont for any and all attorneys' fees, costs, and expenses in connection with the Actions and settlement of the Released Claims, regardless of whether any Class Member retained separate or additional counsel, or incurred separate or additional attorneys' fees, costs, or expenses. Moreover, all costs relating to implementation of the Settlement Agreement and distribution of the Settlement Amount shall be paid by the Class Administrator exclusively out of the Settlement Amount, and DuPont shall have no liability for any costs or expenses associated with implementation of the Settlement Agreement or distribution of the Settlement Amount, including any fees or costs incurred by the Administrator or Class Counsel.

7. Final judgment is hereby entered dismissing with prejudice the common law private nuisance and public nuisance claims for injunctive relief certified in the Court's March 22, 2011, Amended Class Certification Order as to the Class Representatives and Class Members against DuPont, without costs, other than what has been specifically provided for in the

Settlement Agreement. Because there is no just reason for delay, the Court hereby directs the entry of a final judgment on those dismissed Class Claims, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

8. All Class Members are bound by the Release in Section 10 of the Settlement Agreement, and are hereby permanently enjoined and restrained from filing or prosecuting any Released Claim against any Released Parties as defined in Sections 1.26 and 1.27 of the Settlement Agreement.

9. The Court hereby finds that the Class Notice that Class Counsel has given is consistent with and satisfies the due process rights of Class Members.

10. Without affecting the finality of this judgment in any way, the Court retains jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement Agreement and Class Administrator Agreement. During the term of the Settlement Agreement and Class Administrator Agreement, the Class Representatives or DuPont may apply to the Court for any relief necessary to construe or effectuate this Settlement Agreement or Class Administrator Agreement. DuPont and Class Counsel may also jointly agree by written amendment to modify the provisions of the Settlement Agreement or Class Administrator Agreement as they deem necessary to effectuate its intent, provided, however, that they may make no agreement that reduces or impairs any class benefits to any Class Members without approval by the Court.

11. The Parties and the Class Administrator are directed to provide the benefits of the Settlement Agreement to the Classes as provided for in the Settlement Agreement and Class Administrator Agreement, and in accordance with the notice mailed to the Class Members.

12. The Settlement Fund shall be a Qualified Settlement Fund as described in Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1 established by order of this Court, and shall remain subject to the jurisdiction of this Court. Where applicable and in the best interests of the Class Members, the Settlement Fund is authorized to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code.

13. If the class settlement does not become effective in accordance with the terms of the Settlement Agreement, then this judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement, and in such event, all orders and judgments entered in connection herewith shall be null, void and vacated to the extent provided by and in accordance with the Settlement Agreement.

14. The Court has considered the due process rights of absent Class Members and finds that such rights have been and are adequately protected herein. The Court finds that the fact that only a small number of Class Members opted out of the settlement provides support for the proposed settlement.

15. The Court further finds that the four persons who attempted to submit objections to the settlement do not have standing to object and therefore their objections must be dismissed.

16. This Order is a Final Judgment, and is in all respects a final and appealable order.

17. Except as expressly stated otherwise in this Final Order, the Preliminary Approval Order, or the Settlement Agreement, all costs shall be borne by the party incurring them.

IT IS SO ORDERED:

Dated: _____

RENEE MARIE BUMB
U.S. District Court Judge

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, ET AL., individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT, APPROVING FEES AND EXPENSES, APPROVING APPOINTMENT OF CLASS ADMINSTRATOR AND DIRECTING ENTRY OF FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE

Plaintiffs Richard A. Rowe, Michelle E. Tomarchio, Regina M. Trout, Allen K. Moore, Catherine A Lawrence and Misty Scott and Defendant E.I. du Pont de Nemours and Company ("DuPont") jointly moved the Court for final approval of the proposed Class Settlement

Agreement ("Settlement Agreement") and appointment of a Class Administrator. Additionally, Class Counsel[1] has petitioned for an award of fees and expenses.

On March 22, 2011, this Court entered the Preliminary Approval Order in the Actions, preliminarily approving the terms of the class action settlement as set forth in the Settlement Agreement. On June 14, 2011, this Court conducted a Fairness Hearing to: (a) determine whether the proposed settlement and the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate and should be finally approved by the Court; (b) determine whether final judgment should be entered in the Actions pursuant to the Settlement Agreement; (c) entertain objections from Class Members or any other person(s) as to the proposed settlement or any other matter related thereto; (d) consider Class Counsel's petition for an award of attorneys fees and reimbursement of expenses; (e) determine whether the proposed Class Administrator should be appointed, and (f) rule on any other matter pertaining to the proposed settlement.

The Court determines that the two notices provided to Class Members fully complied with all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and the Notice Plan that this Court approved in the Preliminary Approval Order. Class Members were notified of the hearing to address the fairness of the proposed settlement and were given an opportunity to appear and to voice objections to the settlement. Based on the thousands of notices sent to class members, only 27 Class Members opted out of the settlement and no Class Member[2] submitted an objection to the settlement. The Court also received and considered

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[2] Three purported "objection" letters were submitted but none were on behalf of any Class Members. Two letters were on behalf of persons outside the class definition and therefore not members of the class. The third was submitted on behalf of a person who opted out of the settlement so is also no longer a Class Member.

arguments and evidence from the attorneys for the respective Parties in connection with the proposed compromise and settlement of the Actions and the award of Class Counsel's attorneys fees and expenses and gave all persons requesting to be heard an opportunity to be heard in accordance with the procedure set forth in the Preliminary Approval Order. The Court also considered all the written arguments filed in this matter. Based on the oral and written arguments and evidence presented in connection with the motions, the Court makes the following FINDINGS:

A. The consideration/benefit to be given to Class Members under the terms of the Settlement Agreement is reasonable in light of the strengths and weaknesses of the Class Members' certified Class Claims.

B. The Settlement Agreement is fair, adequate, and reasonable and in the best interests of the Class for the various reasons set forth in the record of the March 22, 2011, preliminary approval hearing, and as set forth in the record during the June 14, 2011, final fairness hearing, considering each of the factors identified in *Girsh v. Jepson,* 521 F.2d 153, 157 (3d Cir. 1975) and *In re Prudential,* 148 F.3d at 323, including:

1. This litigation has been highly complex and of lengthy duration, spanning more than five years;

2. The reaction of the Classes to the Settlement has been overwhelmingly positive, with less than 0.3 % of Class Members opting out and no Class Member objections to any aspect of the Settlement;

3. The Settlement was reached at an advanced stage in the proceedings, after more than four years of active, contested litigation, including briefing of dispositive/*Daubert* motions and final trial preparation activities;

4. The Classes faced considerable risks to their ability to establish liability and, regardless of which party prevailed at trial, appeal was likely;

5. The risk of maintaining certification of the Classes through trial was significant;

6. The Settlement provides a significant benefit to the Classes now that is reasonable in light of the attendant risks of continuing the litigation;

7. Given the advanced stage of the litigation, the underlying issues were sufficiently mature to support reasoned evaluation of the settlement;

8. Both sides were sufficiently aware and apprised of the development of relevant scientific knowledge to adequately inform the settlement decision;

9. The Parties had adequately investigated the merits of the claims through extensive discovery and had an ability to properly assess the probable outcome of the Class Claims at trial; and

10. Class Members were provided opt-out rights under the Settlement and court-approved Notice Plan.

C. The Classes have at all times, including during the negotiation of the Settlement Agreement and its presentation to the Court, been represented by competent counsel. Class Counsel has recommended to the Court that the Settlement Agreement be approved. Class Counsel has exercised skill and experience in representing the Class, and their work has resulted in a substantial benefit to the Class. The Settlement Agreement provides for the payment of attorneys fees to Class Counsel, plus costs reasonably incurred in prosecution of this action, and Class Counsel has applied for an award of fees of $2,766,390 and reasonably incurred costs in the amount of $886,224.27. The Court has considered Class Counsel's petition for attorneys' fees and costs and hereby enters supplemental findings of fact and conclusions of law pertaining

to Class Counsel's motion. Class Counsel's fees and expenses shall be paid by the Class Administrator exclusively from the Settlement Amount pursuant to the Settlement Agreement.

D. Notice of the Settlement Agreement has been mailed in accordance with this Court's Order Preliminarily Approving Settlement and the Notice Plan contained therein. The notice given in the manner specified in that order provided the best notice practicable under the circumstances, and was reasonably calculated to communicate actual notice of the litigation and the proposed settlement to Class Members. The Court finds that the notice which has been given is consistent with and satisfies the due process rights of Class Members.

E. The Court finds that the Settlement Agreement was the result of arms length negotiation, was entered into in good faith by the Parties, and was not the product of fraud or collusion.

F. Class Counsel request that the Court award attorneys' fees in the amount of 33.33% of the Settlement Amount, or $2,766,390. Class Counsel also seek reimbursement of $886,224.27in litigation expenses from the Settlement Amount. The Court finds that this award is reasonable under the circumstances, based on applicable caselaw and the written submissions and oral argument of Class Counsel. *In re Rite-Aid Corp. Sec. Litig.,* 396 F.3d 294, 301 (3d Cir. 2005); *Dewey v. Volkswagen of America,* 728 F.Supp.2d 546, 592 (D.N.J. 2010).

1. There are two methods considered acceptable in the Third Circuit for evaluating the reasonableness of a fee request and determining the appropriate amount of a fee award (the lodestar method and the percentage-of-recovery method). Courts typically employ the percentage-of-recovery method in common fund cases, such as the present litigation, where the fees are to be deducted directly from the settlement fund being established for the class. With either method, the goal is make sure that counsel are fairly compensated for the

amount of work done and the results achieved. In this matter, the Court finds that awarding a percentage-of-recovery fee in the amount of 33.33% of the Settlement Amount is the better choice and is reasonable based on the following factors:

1. The Settlement fund is $8.3 million and benefits approximately 10,000 Class Members;

2. Less than 0.3% of estimated Class Members opted-out of the Settlement and there were no objections to either the Settlement terms of Class Counsel's requested fees/expenses from any Class Member;

3. Class Counsel were adequately skilled and efficient in pursuing the Class Members' Class Claims;

4. The litigation was highly complex and lengthy in duration, spanning more than five years;

5. Class Counsel undertook the litigation on behalf of the Class Members on a contingent fee basis and advanced almost $900,000 in expenses for the Class Members' benefit with the significant risk of non-payment;

6. Class Counsel collectively spent over 20,000 hours over five years on the Class Claims in this litigation;

7. The 33.33% fee requested in this litigation is well within the range of fees awarded in similar cases of similar complexity, duration, and risk; and

8. The fee requested by Class Counsel here is less than half the normal billable value of the time spent by Class Counsel on the Class Claims, yielding a lodestar of only approximately 0.41, which is well below the lodestar typically awarded in similar cases of similar complexity, duration, and risk.

The Court further finds that awarding the $886,224.27 in class-related expenses requested by Class Counsel is reasonable and appropriate, because those class-related expenses are adequately documented, reasonable, and recoverable, based on the detailed submissions and oral argument of Class Counsel, including lengthy declarations from each Class Counsel firm with detailed backup and explanation as to how and why the various categories of claimed expenses were incurred for the benefit of the Classes, which exclude costs/expenses incurred solely in connection with the pursuit of any individual plaintiff's non-Class Claims or in connection with submission of Class Counsel's fee/expense petition

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court appoints Edgar Gentle as the Class Administrator. All fees and expenses of the Class Administrator shall be paid exclusively from the Settlement Amount, pursuant to the terms of the Settlement Agreement and the Class Administrator Agreement.

2. After considering the factors governing judicial approval of the proposed class settlement under Rule 23(e) and other applicable law, the Settlement Agreement, the terms of which are incorporated herein by reference, is hereby approved as fair, adequate and reasonable and in the best interests of the Class Members. Class Representatives, Class Counsel, and DuPont have agreed to the language in this Final Order.

3. Each of the Class Members identified on the list attached hereto at Exhibit A have voluntarily opted out of the Settlement and are hereby excluded from the Settlement and shall not be included within the definition of the Class Members under the Settlement or this Order;

4. The Class Administrator's payment to Class Counsel of $2,766,390 for attorneys' fees and reasonably incurred costs of $886,224.27 from the Settlement Amount, pursuant to the

terms of the Settlement Agreement, is hereby approved. Such payments shall be made as specified in the Settlement Agreement and Class Administrator Agreement.

5. Any dispute concerning the aggregate amount or allocation of Class Counsel's fee and expense award shall be subject to the exclusive jurisdiction of this Court and shall be a separate and severable matter from all other matters in this Final Judgment and the finality and fairness of the Settlement Agreement with the Class Members. Any appeal of the Class Counsel attorney's fees and expense award shall be severed from this Final Judgment and shall not affect the finality of this judgment as to the settlement and release of the Class Members' claims against the Released Parties.

6. The attorneys' fees, costs, and expense payment from the Settlement Amount described in Paragraph 4 above is the total amount that will be paid by DuPont for any and all attorneys' fees, costs, and expenses in connection with the Actions and settlement of the Released Claims, regardless of whether any Class Member retained separate or additional counsel, or incurred separate or additional attorneys' fees, costs, or expenses. Moreover, all costs relating to implementation of the Settlement Agreement and distribution of the Settlement Amount shall be paid by the Class Administrator exclusively out of the Settlement Amount, and DuPont shall have no liability for any costs or expenses associated with implementation of the Settlement Agreement or distribution of the Settlement Amount, including any fees or costs incurred by the Administrator or Class Counsel.

7. Final judgment is hereby entered dismissing with prejudice the common law private nuisance and public nuisance claims for injunctive relief certified in the Court's March 22, 2011, Amended Class Certification Order as to the Class Representatives and Class Members against DuPont, without costs, other than what has been specifically provided for in the

Settlement Agreement. Because there is no just reason for delay, the Court hereby directs the entry of a final judgment on those dismissed Class Claims, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

8. All Class Members are bound by the Release in Section 10 of the Settlement Agreement, and are hereby permanently enjoined and restrained from filing or prosecuting any Released Claim against any Released Parties as defined in Sections 1.26 and 1.27 of the Settlement Agreement.

9. The Court hereby finds that the Class Notice that Class Counsel has given is consistent with and satisfies the due process rights of Class Members.

10. Without affecting the finality of this judgment in any way, the Court retains jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement Agreement and Class Administrator Agreement. During the term of the Settlement Agreement and Class Administrator Agreement, the Class Representatives or DuPont may apply to the Court for any relief necessary to construe or effectuate this Settlement Agreement or Class Administrator Agreement. DuPont and Class Counsel may also jointly agree by written amendment to modify the provisions of the Settlement Agreement or Class Administrator Agreement as they deem necessary to effectuate its intent, provided, however, that they may make no agreement that reduces or impairs any class benefits to any Class Members without approval by the Court.

11. The Parties and the Class Administrator are directed to provide the benefits of the Settlement Agreement to the Classes as provided for in the Settlement Agreement and Class Administrator Agreement, and in accordance with the notice mailed to the Class Members.

12. The Settlement Fund shall be a Qualified Settlement Fund as described in Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1 established by order of this Court, and shall remain subject to the jurisdiction of this Court. Where applicable and in the best interests of the Class Members, the Settlement Fund is authorized to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code.

13. If the class settlement does not become effective in accordance with the terms of the Settlement Agreement, then this judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement, and in such event, all orders and judgments entered in connection herewith shall be null, void and vacated to the extent provided by and in accordance with the Settlement Agreement.

14. The Court has considered the due process rights of absent Class Members and finds that such rights have been and are adequately protected herein. The Court finds that the fact that only a small number of Class Members opted out of the settlement provides support for the proposed settlement.

15. The Court further finds that the four persons who attempted to submit objections to the settlement do not have standing to object and therefore their objections must be dismissed.

16. This Order is a Final Judgment, and is in all respects a final and appealable order.

17. Except as expressly stated otherwise in this Final Order, the Preliminary Approval Order, or the Settlement Agreement, all costs shall be borne by the party incurring them.

IT IS SO ORDERED:

Dated: _____

RENEE MARIE BUMB
U.S. District Court Judge

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, GINA M. CARTER, as administrator of the estate of Mary L. Carter, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-1810-RMB-AMD
MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

CLASS ADMINISTRATOR AGREEMENT

This Class Administrator Agreement ("Administrator Agreement") is made and entered into as of May 24, 2011, and executed by and among the Class Members (as defined by the Class Settlement Agreement), acting by and through Class Counsel (as defined by the Class Settlement Agreement), E.I. du Pont de Nemours and Company ("DuPont") and Edgar C. Gentle, III, acting as Class Administrator for the Class Action Settlement ("Class Administrator").

RECITALS

A. Pursuant to the Class Settlement Agreement dated February 22, 2011, and preliminarily approved by the Court on March 22, 2011, the Parties have agreed to settle the Class Claims in the above referenced litigation, subject to final approval of the Court

under Federal Rule of Civil Procedure 23(e). Capitalized terms used in this Class Administrator Agreement not otherwise defined herein shall have the meanings given to those terms in the Class Settlement Agreement.

B. As provided in Section 12 of the Class Settlement Agreement, DuPont shall wire transfer the Settlement Amount specified in Section 8 of the Class Settlement Agreement into an interest-bearing escrow account established by the Class Administrator at Wells Fargo Bank, National Association, which Settlement Amount the Class Administrator shall distribute, subject to the terms of the Class Settlement Agreement and this Class Administrator Agreement, for the satisfaction of obligations more completely described in the Class Settlement Agreement.

AGREEMENT

In consideration of the mutual promises and covenants of the Parties and Class Administrator and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Appointment of Class Administrator.

   The Parties hereby appoint Edgar C. Gentle, III, to serve as Class Administrator to administer the terms of this Class Administrator Agreement. Mr. Gentle accepts such appointment as Class Administrator, subject to the terms and conditions of this Class Administrator Agreement. The Class Administrator undertakes to perform only such duties as are expressly set forth in this Class Administrator Agreement, and no other duties or responsibilities of the Class Administrator shall be implied.

2. Establishment of Escrow Fund.

   As provided in Section 12 of the Class Settlement Agreement, DuPont shall wire transfer the Settlement Amount specified in Section 8 of the Class Settlement Agreement into an interest-bearing escrow account established by the Class Administrator at Wells Fargo Bank, National Association, which Settlement Amount, together with all accrued interest thereon, shall constitute the "Escrow Fund." The Class Administrator shall release and disburse funds from the Escrow Fund in accordance with the terms of this Administrator Agreement and the Class Settlement Agreement.

3. Investment and Accounting of the Escrow Fund.

   (a) The Class Administrator shall invest the Escrow Fund so as to eliminate any principal volatility risk by limiting the Escrow Fund investment regimen to short-term Treasury Notes maturing before there is a liquidity need for the monies so invested and Federal Government security money market funds. Any loss incurred from an investment made pursuant to this Section 3 shall be borne by the

Escrow Fund. All income and earnings on the Escrow Fund shall become part of the Escrow Fund and shall be released and distributed in accordance with the terms of this Administrator Agreement and the Class Settlement Agreement. Neither the Parties, Class Counsel, the Released Parties nor the Class Administrator shall have liability for any loss sustained as a result of any investment made pursuant to the terms of this Administrator Agreement or as a result of any liquidation of any investments held in order to provide funds necessary to make required payments under this Administrator Agreement.

(b) Receipt, investment, and reinvestment of the Escrow Fund shall be confirmed by Class Administrator as soon as practicable by account statement. Class Administrator shall deliver to the Parties a quarterly accounting in writing of property constituting the Escrow Fund and all distributions therefrom during such quarter. Any discrepancies in any such account statement or accounting shall be noted by Parties to Class Administrator within sixty (60) calendar days after receipt thereof. The Parties' failure to inform Class Administrator in writing of any discrepancies in any such account statement or accounting within such sixty (60) day period shall conclusively be deemed confirmation of such account statement or accounting, as applicable, in its entirety.

4. Assembling Claims Information and Determining Per-Household Benefit Amount

(a) Following Court approval and resolution of all appeals, if any, the Class Administrator shall send each Household a Claim Form in the format attached hereto as Exhibit 1. Each Household that wishes to receive Settlement Benefits shall complete, sign, and return a Claim Form. The Claim Form shall request information sufficient to verify class membership and shall ask the Household to select either the Filter Option or the Incidental Payment Option. Households shall have 60 days from the date of the mailing of the Claim Form to return the completed and signed form to the Class Administrator. The completed Claim Form must be postmarked no later than 60 days from the date it was mailed to the Class Member Household.

(b) Class Administrator shall: (1) verify class membership by comparing completed claims forms to the Class Member list that Class Counsel supplies to Class Administrator and consulting Class Counsel, where necessary; (2) use returned Claim Forms to determine the total number of participating Class Households; (3) maintain a list of the total number of participating Class Households that select the Filter Option and the total number of Class Households that choose the Incidental Payment Option; (4)

based on the number of Class Households selecting the Filter Option, negotiate the best available price for the total number of water filter systems, associated replacement cartridges and bulk mailing rate for delivering Filter Option packages to the Class Households; (5) based on the number of participating Class Households, the amount of the Escrow Fund after deducting any court-approved attorneys' fees/expenses and Class Administrator expenses, the negotiated water filter system and replacement cartridge prices, the bulk delivery rate, and the installation check value for each Filter Option package (to be at least $200), determine the total number of replacement cartridges to be included in each Filter Option package (which shall be no less than 10 per each such Filter Option package); and (6) set a cash value for Incidental Payment Option checks that is equivalent to the value of the Filter Option package, such that all participating Households receive either a Filter Option package or an Incidental Payment Option check that are of equivalent value.

(c) If, after performing these per-Household calculations, the Class Administrator determines that funds will remain in the Escrow Fund after funds are used to purchase Filter Option packages and to make Incidental Option payments that are not enough to purchase another replacement cartridge for each Household choosing the Filter Option package while providing an equivalent cash amount for each Household choosing the Incidental Payment Option, Class Administrator shall allocate the remainder of the Escrow Fund per participating Class Household by dividing the amount equally among all participating Households and adding the per-Household portion of the remainder to the installation check included in the Filter Option package and to the incidental payment check provided under the Incidental Payment Option.

5. Disbursements of Funds from Escrow Fund.

Class Administrator is hereby authorized and directed to make disbursements of all or part of the Escrow Fund as follows:

(a) Class Administrator shall deliver to the agent(s) designated by Class Counsel in such amounts/percentages as may be specified by the Court per Class Counsel firm such funds as may be required to satisfy Class Counsel's attorneys' fees and expenses, but only upon Class Administrator's receipt of an order by the Court directing the payment to Class Counsel of their attorneys' fees and expenses and setting the amount of same and a certification by Class Counsel that has been served on Class Administrator and DuPont's counsel stating that the Court's order is final and unappealable.

(b) Class Administrator shall draw for his own account and pay such other funds as may be required to pay his reasonable fees and expenses in the administration of the Escrow Fund pursuant to the Class Settlement Agreement and this Administrator Agreement, and consistent with the budget set forth in Exhibit 2 hereto, but only up to a total amount not to exceed $205,000, and only upon Class Administrator's performance of the following:

i. Distribution of a certificate signed by Class Administrator including (A) an invoice or other detailed description of the amount, basis, and recipient for the payment, and (B) the date upon which the Class Administrator intends to make the payment referenced in (A) (the "Distribution Notice"); or

ii. Receipt of a certificate signed by Class Counsel and provided to DuPont's Counsel directing the release and disbursement of funds from the Escrow Fund to pay Class Administrator for administrative costs associated with administration of this Settlement.

(c) Class Administrator shall draw from the Escrow Account such funds as may be required to deliver to Class Households the Filter Option package and Incidental Payment Option payment as required pursuant to Article 8 of the Class Settlement Agreement and as described and according to the procedures set forth in Section 4 of this Administrator Agreement and in the Class Notice (attached at Exhibit 3 hereto and expressly incorporated herein) and in Plaintiffs' Second Supplement to Joint Motion for Preliminary Approval of Class Action Settlement (attached at Exhibit 4 hereto and expressly incorporated herein) but only upon Class Administrator's receipt of an order by the Court directing the Filter Option package and Incidental Payment Option payments be delivered/made to the Class Households and a certification by Class Counsel that has been served on Class Administrator and DuPont's counsel stating that the Court's order is final and that all appeals, if any, have been exhausted. With respect to the Filter Option, Class Administrator shall order and have delivered to Class Households that choose the Filter Option the Culligan RC-EZ-4 water system and its associated replacement cartridges, the Culligan installation and operation instructions (attached at Exhibit 5 hereto), and the Culligan technical support number specified in those instructions in accordance with § 4 herein and Exhibits 3 and 4. Per Section 10(b) of this Class Administrator Agreement, Released Parties shall have no responsibility for any aspect of the Filter Option.

(d) Class Administrator shall pay from the Escrow Fund directly to the Internal Revenue Service or other taxing authority such funds as

may be required to satisfy taxes assessed against the Escrow Fund pursuant to Section 9(b) of this Agreement. Neither Class Counsel nor DuPont shall have responsibility for payment of any such taxes.

6. Termination of Escrow Fund.

This Class Administrator Agreement and the Escrow Fund provided for herein shall terminate following the earliest to occur of (a) the date when all funds in the Escrow Fund shall have been released and disbursed in accordance with the terms of this Class Administrator Agreement and the Class Settlement Agreement; or (b) the date Class Administrator receives written notice signed jointly by Class Counsel and DuPont and providing Class Administrator with written instructions with respect to the release and disbursement of the Escrow Fund at the time of such termination. At the termination of the Escrow Fund, the Class Administrator shall submit a final fiduciary accounting to the Court and the Parties for review and approval. Any of the Parties or the Court may at his/her/its option (but not obligation) demand an outside audit or compilation of the final accounting. Upon receipt of an order from the Court approving the termination of the Escrow Fund, Class Administrator shall close the Escrow Fund, and the Class Administrator Agreement shall terminate.

7. Class Administrator Fees.

Class Administrator may include within his fees described in Section 5(b) a reasonable fee for management of the Escrow Fund and Class Administrator's other duties described herein, provided that the total amount of any such fees is incurred consistent with and pursuant to the budget set forth in Exhibit 2 hereto, and shall not exceed a total of $205,000.

8. Patriot Act Disclosure/Taxpayer Identification Numbers/Tax Reporting.

Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("the USA PATRIOT Act") may require Class Administrator to implement reasonable procedures to verify the identity of any person who opens a new account. Accordingly, the Parties acknowledge that Section 326 of the USA PATRIOT Act and Class Administrator's identity verification procedures require Class Administrator to obtain information which may be used to confirm the Parties' identity, including without limitation name, address, and organizational documents ("identifying information"). Class Counsel agrees to provide Class Administrator with and consent to Class Administrator obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by Class Administrator.

9. Tax Reporting.

(a) The Parties and Class Administrator agree that the Escrow Fund is intended to be, and shall be treated as a "qualified settlement fund" within the meaning of Treasury Regulations § 1.468B-1. The Class Administrator, as required by the Parties, shall timely make such elections as necessary or advisable to effect this agreed tax treatment, including the "relation-back election" (as defined by Treasury Regulation § 1.468B-2(k)(3)), and timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and shall cause the appropriate filings to occur. The Class Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Escrow Funds. All taxes incurred by the Escrow Fund shall be paid exclusively from the Escrow Fund.

(b) Taxes and tax expenses of the Escrow Fund shall be treated as, and considered to be, a cost of administration of the Class Settlement Agreement and shall be timely paid or reimbursed by the Class Administrator out of the Escrow Fund without prior order from the Court pursuant to Section 5(d) of this Class Administrator Agreement. The Class Administrator shall be obligated (notwithstanding anything here to the contrary) to withhold from distribution out of the Escrow Fund any funds necessary to pay any tax or tax expenses, including the establishment of adequate reserves for any taxes or tax expenses, as well as any amounts that may be required to be withheld under Treasury Regulation Section 1.468B-2.

(c) The Class Administrator may retain or hire a qualified third party to perform any of its duties specified in this Agreement. The fees and expenses of such qualified third party shall be considered costs of administration of the Class Settlement Agreement and shall be payable from the Escrow Fund under Section 5(b) of this Agreement.

(d) It is the sole responsibility of the Class Members to pay taxes, plus any penalties and interest, on any amounts received by them pursuant to the Class Settlement Agreement, and neither DuPont nor Class Counsel shall have any liability for such taxes, penalties, or interest or for the determination thereof.

10. Limitation of Liability

(a) In no event shall the Released Parties be obligated to pay anything in excess of the Settlement Amount. The Released Parties shall have no obligation, interest in, or responsibility with respect to the claims process or the Escrow Fund including, but not limited to the

allocation, administration, investment, or distribution of the Escrow Fund, the Filter Option, the Incidental Payment Option, and/or any acts, omissions or conduct of the Class Administrator. The Class Administrator shall indemnify, defend, and hold the Settling Parties and their counsel harmless from and against any harm or injury suffered by reason of the misuse or erroneous disbursement of the funds in the Escrow Fund or any other act or failure to act with respect to the distribution of the Settlement Amount or Escrow Fund. This indemnity provision shall not apply to payments approved by the Court after giving prior reasonable notice to the Settling Parties.

(b) Further, the Released Parties believe that the Actions are without merit and specifically deny and dispute the factual, scientific, medical and other bases asserted in support the Class Claims, including but not limited to the demand for filtering Class Members' residential drinking water for PFOA. Accordingly, the Parties acknowledge and agree that the Released Parties shall have no responsibility for any aspect of the Filter Option, including but not limited to: a) selection of the filter system and its distribution; and/or b) providing responses to any requests or questions from Class Members regarding the Filter Option. Class Counsel, the Released Parties, and Class Administrator disclaim any and all liabilities, warranties, conditions, or representations (express, implied, oral or written), relating to or arising out of the Filter Option, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose.

(c) The Class Administrator shall exercise the degree of care and skill of a prudent person under the circumstances in the conduct of his own affairs and shall not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything he may do or refrain from doing in connection herewith, except for his own willful misconduct or negligence. It is the intention of the Parties hereto that the Class Administrator shall never be required to use, advance, or risk his own funds or otherwise incur financial liability in the performance of any of his duties or the exercise of any of his rights and powers hereunder.

(d) The Class Administrator may rely upon, and shall not be liable for acting or refraining from acting upon, any written notice, instruction or request or other paper furnished to him hereunder and reasonably believed by him to be genuine and to have been signed or presented by the proper party or parties. The Settling Parties, their counsel, and the Class Administrator shall have no liability for any loss arising from any cause beyond the Class Administrator's

control, including, but not limited to the following: (a) the act, failure, or neglect of any other party hereto or any agent or correspondent prudently selected by the Class Administrator for the remittance of funds; (b) any delay, error, omission, or default of any mail, courier, telegraphs, cable, or wireless agency or operator; or (c) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers. In no event shall any of the Settling Parties or their counsel have any liability or responsibility with respect to the distribution and administration of the Escrow Fund, including but not limited to, the costs and expenses of such distribution and administration.

11. Notices and Funds Transfer Information.

All communications hereunder shall be in writing, provided to the persons identified in Section 15.12 of the Class Settlement Agreement, and shall be deemed to be duly given and received:

(a) Upon delivery, if delivered personally, or upon confirmed transmittal, if by facsimile or electronic mail;

(b) On the next Business Day (as hereinafter defined) if sent by overnight courier; or

(c) Four (4) Business Days after mailing if mailed by prepaid certified mail, return receipt requested, to the appropriate notice address.

12. Counterparts.

This Class Administrator Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and such counterparts will constitute an original.

13. Successors and Assigns.

This Class Administrator Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns. This Class Administrator Agreement may not be assigned by operation of law or otherwise without the prior written consent of each of the Parties and Class Administrator and prior Court approval.

14. Severability.

The provisions of this Agreement will be deemed severable, and if any provision or part of this Class Administrator Agreement is held illegal, void, or invalid under applicable law, such provision or part may be changed to the extent necessary to make the provision or part, as so changed, legal, valid, and binding. If any provision of this Class Administrator Agreement is held illegal, void, or

invalid in its entirety, the remaining provisions of this Class Administrator Agreement will not in any way be affected or impaired but will remain binding in accordance with their terms.

15. Headings.

The Section headings in this Class Administrator Agreement are for convenience of reference only and will not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

16. Waiver.

No failure on the part of any Party to exercise any power, right, privilege, or remedy under this Class Administrator Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Class Administrator Agreement, shall operate as a waiver of such power, right, privilege, or remedy; and no single or partial exercise of any such power, right, privilege, or remedy shall preclude any other or further exercise thereof or any other power, right, privilege, or remedy. No Party shall be deemed to have waived any claim arising out of this Class Administrator Agreement, or any power, right, privilege, or remedy under this Class Administrator Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party, and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

17. Amendments.

This Class Administrator Agreement may not be amended, modified, altered, or supplemented other than by means of a written instrument duly executed and delivered on behalf of each of the Parties and Class Administrator and approved by the Court.

18. Parties in Interest.

None of the provisions of this Class Administrator Agreement is intended to provide any rights or remedies to any Person other than the Parties and Class Administrator and their respective successors and permitted assigns, if any.

19. Entire Agreement.

This Class Administrator Agreement (and its exhibits) and the other agreements referred to herein set forth the entire understanding of the Parties and Class Administrator relating to the subject matter herein and supersede all prior agreements and understandings among or between any of the Parties relating to the subject matter herein.

20. Compliance with Court Orders.

The Parties and Class Administrator expressly recognize that the Court has continuing jurisdiction to administer the Class Settlement Agreement and agree to venue in the United States District Court for the District of New Jersey for the resolution of any and all disputes arising under this Class Administrator Agreement.

21. Applicable Law.

This Class Administrator Agreement shall be governed by and construed under the laws of the State of New Jersey.

Dated as of the 24th day of May, 2011.

E.I. du Pont de Nemours and Company

By: *s/ John M. Johnson*

Counsel for Plaintiffs

By: *s/ Shari M. Blecher*

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Class Administrator

By: *s/ Edgar C. Gentle, III*

Edgar C. Gentle, III
Gentle, Turner & Sexton
Suite 100 – 501 Riverchase Parkway East
Hoover, Alabama 35244

Exhibit 1

CLASS ACTION CLAIM FORM – Page 1

Pursuant to Court Order, **this is a Claim Form which must be properly and timely filled out, signed, and returned in order for you to receive class benefits** as a result of the Settlement of *Rowe, et al, v. E.I. du Pont de Nemours and Company*, Case No. 06-1810-RMB and *Scott v. E.I. du Pont de Nemours and Company,* Case No. 06-3080-RMB.

INSTRUCTIONS

- In order to receive a class benefit you must return this form, **POSTMARKED** no later than ____, 2011, to the following address:

  Claims Administrator for Rowe/Scott Actions
  Gentle, Turner & Sexton
  501 Riverchase Parkway East
  Suite 100
  Hoover, Alabama 35244

- Do Not Submit Your Claim to the Court.

- Only one form can be accepted per household

- All Claim Form responses must be printed or typed and the form must be signed.

- For more information regarding the settlement and benefits provided under this settlement or if you have any questions concerning this Claim Form, write to the Claims Administrator at the address listed above or call the Claims Administrator at 800-345-0837.

- **DO NOT CONTACT THE COURT IF YOU HAVE QUESTIONS CONCERNING THIS CLAIM FORM.**

CLASS ACTION CLAIM FORM – Page 2

SECTION A – CLASS MEMBER INFORMATION

_____
Class Member's First Name

_____
Class Member's Middle Name

_____
Class Member's Last Name

_____
Street Address

_____ _____ _____
City State Zip Code

_____ _____
Telephone Number Social Security Number

SECTION B – CLASS MEMBERSHIP VERIFICATION

Please answer the following 2 questions:

QUESTION 1 (select one of the following and mark your answer with an "X"):

☐ I own and occupy the property listed above.

☐ I rent and occupy the property listed above.

QUESTION 2 (select one of the following and mark your answer with an "X"):

☐ I am a Penns Grove Water System customer.

☐ I have a private well used for drinking water at the property listed above that contains PFOA.

CLASS ACTION CLAIM FORM – Page 3

SECTION C – CLASS BENEFIT SELECTION

Please select **one** of the two options below.
Indicate your selection by marking the box with an "X".

☐ I Select the **Water Filter Option**

If you select this option a water filter package will be sent to you at the address listed on this Claim Form.

☐ I Select the **Incidental Payment Option**

If you select this option a check will be mailed to you at the address listed on this Claim Form.

CERTIFICATION AND VERIFICATION

I certify that, **under the penalties of perjury** in accordance with 28 U.S.C. § 1746, the information set forth in this Claim Form is true and correct to the best of my knowledge.

Your Signature:

X_____

Date (Month/Day/Year):_____

Exhibit 2

April 15, 2011

Edgar C. Gentle, III
GENTLE, TURNER & SEXTON
501 Riverchase Parkway, East, Suite 100
Hoover, Alabama 35244
Phone: 800-345-0837
Phone: 205-716-3000
Fax: 205-716-3010
e-mail: escrowagen@aol.com

Projected Settlement Administration Fees and Expenses
Rowe v. DuPont Settlement
(Based on Assumption of 5,000 Claimants[1])

	ACTIVITY	ESTIMATED VOLUME (HOURS OR UNITS)	RATE	ESTIMATED TOTAL
A.	**Print and Mail Claim Form and One Claimant Update Letter***			
	Project Management: Initial Project and Claim Form Design and Implementation	16 Hours	$150.00	$2,400.00
	Information Systems: Receive, Load and Process Data Files	16 Hours	$150.00	$2,400.00
	Print and Mail Claim Form:			
	Load Class Member Mailing List Provided by Plaintiffs' Counsel and Format for Mail Out		$1,000.00	$1,000.00
	Print, Insert and Mail 5 Page Claim Forms, and 5 page Claimant Update Letter Inserted into a #10 envelope (5,000 Notices)	5,000 Pieces x 2 Mailings	$.44 x 2 Mailings	$4,400.00

* We understand that Class Counsel will be responsible for Settlement Notice.

1. This fee quote assumes a Claim Form Mail-out and One Claimant Update Letter to 5,000 Class Members, and 5,000 Claim Forms submitted for possible approval and participation in the Settlement. In all events, Settlement administration fees and expenses will be capped at $205,000, which is less than 5% of the projected $4.5 net Settlement Fund available to Class Members, and equals $41 per Class Member. Settlement Administration fees and expenses would be billed on a quarterly basis, with each invoice being submitted to the Court and Counsel for the Parties 20 days before requesting Court approval thereof.

Projected Settlement Administration Fees and Expenses
Rowe v. DuPont Settlement
(Based on Assumption of 5,000 Claimants[1])

ACTIVITY		ESTIMATED VOLUME (HOURS OR UNITS)	RATE	ESTIMATED TOTAL
Processing Mail returned by USPS:				
Process mail returned by the USPS	(Assumes 10% returned)	500 Pieces x 2 Mailings	$1.00	$1,000.00
Research for Better Class Member Addresses		500 Pieces x 2 Mailings	$1.00	$1,000.00
Data Entry of Address Corrections Where Forwarding Address is Available		400 Pieces x 2 Mailings	$1.00	$800.00
Mail Claim Forms and Claimant Update Letters to Updated Addresses		400 Pieces x 2 Mailings	$0.49	$392.00
Process Requests for Exclusion		5 Hours	$70.00	$350.00
Total Projected Fees - Class Claim Form and Update Letter Mail-out				$13,742.00

1. This fee quote assumes a Claim Form Mail-out and One Claimant Update Letter to 5,000 Class Members, and 5,000 Claim Forms submitted for possible approval and participation in the Settlement. In all events, Settlement administration fees and expenses will be capped at $205,000, which is less than 5% of the projected $4.5 net Settlement Fund available to Class Members, and equals $41 per Class Member. Settlement Administration fees and expenses would be billed on a quarterly basis, with each invoice being submitted to the Court and Counsel for the Parties 20 days before requesting Court approval thereof.

Projected Settlement Administration Fees and Expenses
Rowe v. DuPont Settlement
(Based on Assumption of 5,000 Claimants[1])

	ACTIVITY	ESTIMATED VOLUME (HOURS OR UNITS)	RATE	ESTIMATED TOTAL
B.	**Internet Support****			
	Web Site Design and Implementation	20 Hours	$150.00	$3,000.00
	Monthly Web Site Hosting of Settlement Documents (Core Pleadings, Orders, Settlement Agreement, Settlement Notice and Claim Form), Answers to Frequently Asked Questions (Prepared with Class Counsel) and Contact Information	12 Months	$55.00	$660.00
	Total Projected Fees - Internet Support			**$3,660.00**
C.	**Telephone Support*****			
	System Usage Charges			
	Number of Calls (assume 10% of class)	500 Calls at 5.0 minutes per call: 2,500 minutes)	$0.20	$500.00
	Transcribe and fulfill requests for Claim Forms (Includes Postage)	500 Notices	$0.49	$245.00
	Total Projected Fees - Telephone Support			**$745.00**

** We have found a website to be indispensable in administering settlements. It facilitates communication with the claimants and the provision of uniform and timely settlement information to the claimants.

*** We traditionally have a live telephone bank to answer claimant calls in, for example, the MDL 926 Breast Implant, Anniston, Alabama PCB and Spelter, West Virginia Zinc Smelter cases.

1. This fee quote assumes a Claim Form Mail-out and One Claimant Update Letter to 5,000 Class Members, and 5,000 Claim Forms submitted for possible approval and participation in the Settlement. In all events, Settlement administration fees and expenses will be capped at $205,000, which is less than 5% of the projected $4.5 net Settlement Fund available to Class Members, and equals $41 per Class Member. Settlement Administration fees and expenses would be billed on a quarterly basis, with each invoice being submitted to the Court and Counsel for the Parties 20 days before requesting Court approval thereof.

Projected Settlement Administration Fees and Expenses
Rowe v. DuPont Settlement
(Based on Assumption of 5,000 Claimants[1])

ACTIVITY	ESTIMATED VOLUME (HOURS OR UNITS)	RATE	ESTIMATED TOTAL
D. Claims Design and Processing			
Pre-Fairness Hearing Document Review, Prepare For and Attend Fairness Hearing, Help Draft Settlement Claim Forms with Counsel for the Parties, Obtain Best Price for Water Filter Device Components, and Related Advice with Travel Expenses.	50 Hours	$150.00	$7,500.00
	Travel Expenses	$1,000.00	$1,000.00
Project Management	20 Hours	$150.00	$3,000.00
Database Information Systems Development	20 Hours	$150.00	$3,000.00
Process and Receive Claim Forms	5,000 Claims	$2.00	$10,000.00
Letter to Claimant Regarding status (Deficient claims, includes First Class Postage) (Assumes Initial 50% Claim Deficiency Rate and 50% Deficiency Rate After First Round of Deficiency Letters)	3,725 Letters	$2.00	$7,450.00
Process and Resolve Deficient Claims	2,500 Claims	$10.00	$25,000.00
Review and Evaluate Complete Claims	5,000 Claims	$10.00	$50,000.00
Total Projected Fees - Claims Processing			**$106,950.00**

1. This fee quote assumes a Claim Form Mail-out and One Claimant Update Letter to 5,000 Class Members, and 5,000 Claim Forms submitted for possible approval and participation in the Settlement. In all events, Settlement administration fees and expenses will be capped at $205,000, which is less than 5% of the projected $4.5 net Settlement Fund available to Class Members, and equals $41 per Class Member. Settlement Administration fees and expenses would be billed on a quarterly basis, with each invoice being submitted to the Court and Counsel for the Parties 20 days before requesting Court approval thereof.

Projected Settlement Administration Fees and Expenses
Rowe v. DuPont Settlement
(Based on Assumption of 5,000 Claimants[1])

	ACTIVITY	ESTIMATED VOLUME (HOURS OR UNITS)	RATE	ESTIMATED TOTAL
E.	**Claimant Benefit Distribution Services**			
	Project Management	50 Hours	$150.00	$7,500.00
	Database Information Systems	16 Hours	$150.00	$2,400.00
	Print and Mail Settlement Fund Distribution Checks and Settlement In-Kind Participation Packages (Includes Postage)	5,000 Checks	$5.00	$25,000.00
	Post Distribution Activities: Reconciliation, Reporting and Remailing Checks Settlement In-Kind Participation Packages	16 Hours	$70.00	$1,120.00
	Preparation of Federal and/or State Income Tax Returns, and Federal Forms 1096 and 1099-MISC	20 Hours	$150.00	$3,000.00
	Total Projected Fees - Distribution Services			**$39,020.00**
F.	**Tax and Accounting Support**			
	State and Federal Income Tax Returns for Qualified Settlement Fund - Two Years****	2 Years	$5,000.00 per year	$10,000.00
	Two Annual Fiduciary Accountings of the Qualified Settlement Fund (for 2011 and 2012) to the Court and a Final Accounting (when the Settlement Administration is Completed)	3 Fiduciary Accountings	$5,000.00 per fiduciary accounting	$15,000.00
	Total Projected Fee - Tax and Accounting Support			**$25,000.00**

**** We assume that New Jersey and Federal income tax returns for the Qualified Settlement Fund will be prepared for 2011 and 2012, with the Settlement Administration probably not being completed until 2012.

1. This fee quote assumes a Claim Form Mail-out and One Claimant Update Letter to 5,000 Class Members, and 5,000 Claim Forms submitted for possible approval and participation in the Settlement. In all events, Settlement administration fees and expenses will be capped at $205,000, which is less than 5% of the projected $4.5 net Settlement Fund available to Class Members, and equals $41 per Class Member. Settlement Administration fees and expenses would be billed on a quarterly basis, with each invoice being submitted to the Court and Counsel for the Parties 20 days before requesting Court approval thereof.

Projected Settlement Administration Fees and Expenses
Rowe v. DuPont Settlement
(Based on Assumption of 5,000 Claimants[1])

ACTIVITY	ESTIMATED VOLUME (HOURS OR UNITS)	RATE	ESTIMATED TOTAL
G. **Total Projected Fees and Expenses, All Phases** (FEE CAP of $205,000.00)			**$189,117.00**

1. This fee quote assumes a Claim Form Mail-out and One Claimant Update Letter to 5,000 Class Members, and 5,000 Claim Forms submitted for possible approval and participation in the Settlement. In all events, Settlement administration fees and expenses will be capped at $205,000, which is less than 5% of the projected $4.5 net Settlement Fund available to Class Members, and equals $41 per Class Member. Settlement Administration fees and expenses would be billed on a quarterly basis, with each invoice being submitted to the Court and Counsel for the Parties 20 days before requesting Court approval thereof.

Exhibit 3

CLASS ACTION NOTICE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VINCINAGE

If, as of the date of this Notice, you own or lease and occupy a residence located within a two mile radius of the DuPont Chambers Works plant that has a private well for drinking water that contains PFOA,

OR

If, as of the date of this Notice, you own or lease and occupy a residence with drinking water supplied by the Penns Grove Water System,

your rights may be affected by a proposed class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

The proposed Settlement creates a fund to provide one benefit described below per Household to members of the Settlement Classes. "Household" means a single residential unit occupied by one or more members of one of the Settlement Classes.

The Court in charge of this case must conduct a hearing to decide whether to approve the proposed Settlement. No claims for settlement benefits will be processed and no benefits will be distributed to Households until the Court approves the Settlement and the time for any and all appeals has expired.

Your legal rights and options - - and the **deadlines** to exercise them - - are explained in this notice. Your rights are affected whether you act or don't act. Please read this notice carefully.

WHAT THIS NOTICE CONTAINS

CLASS ACTION NOTICE

Basic Information

1. Why did I get this notice package?

You have received this Notice of Class Action Settlement because you have been identified as a potential member of one or both of the classes on whose behalf nuisance claims for injunctive relief in the cases will be settled, if the Court approves the proposed Settlement. There are two cases involved in this proposed Settlement: *Rowe, et al, v. E.I. du Pont de Nemours and Company*, Case No. 06-1810-RMB and *Scott v. E.I. du Pont de Nemours and Company*, Case No. 06-3080- RMB. The Court in charge of these cases is the United States District Court for the District of New Jersey, Camden Vicinage, the Honorable Renee M. Bumb presiding. The people who sued are called the Plaintiffs, and the company they sued, DuPont, is called the Defendant.

The nuisance claims in the cases are described in greater detail on page 3. The people covered by the proposed Settlement ("the Class Members") are individuals who, as of the date of this Notice, own or lease and occupy a residence located within a two mile radius of the DuPont Chambers Works plant that has a private well for drinking water that contains a chemical known as "PFOA," or individuals who, as of the date of this Notice, own or lease and occupy a residence with drinking water supplied by the Penns Grove Water System.

The Court approved this notice being sent to you because you have a right to know about the proposed Settlement of these class action lawsuits, and about your options, before the Court decides whether to approve the Settlement. If the Court approves the proposed settlement and after any objections and appeals are resolved, the parties will proceed to fulfill their obligations in accordance with the terms of the Settlement Agreement.

This package explains the lawsuit, the Settlement, and your legal rights.

IF YOU RECEIVED THIS NOTICE AS A LANDLORD OR OWNER OF A RESIDENTIAL STRUCTURE THAT HAS TENANTS: you are hereby requested to call Class Counsel as soon as you can at the following toll-free number: **(888) 570-4736**, and provide Class Counsel with the name(s) and address(es) of each tenant so that a copy of this Notice of Class Action Settlement can be mailed to each such tenant's household.

2. What are these lawsuits about?

These cases arise from Defendant E. I. du Pont de Nemours and Company's ("DuPont's") alleged release of ammonium perfluorooctanoate, also known as "C-8" or "PFOA," from its Chambers Works Plant in Salem County, New Jersey. In 2006, Class Counsel filed two class action lawsuits against DuPont alleging that PFOA released from the Chambers Works Plant had impacted the public and private drinking water supplies in the area surrounding the Chambers Works Plant.

CLASS ACTION NOTICE

DuPont denies the allegations in both lawsuits and specifically denies and disputes the factual, scientific, medical, or other bases asserted in support of the nuisance claims, including the Class Representatives' demands for filtering of Class Members' residential drinking water for PFOA.

3. Why are these cases class actions?

In a class action, one or more people, called Class Representatives (for example, in these cases, Richard L. Rowe and Misty Scott), sue on behalf of people who may have similar claims. All of the people represented by the Class Representatives are a "Class" or "Class Members." One court presides over the class-wide claims that the court determines should be addressed in one proceeding for all Class Members.

In October 2009, U.S. District Judge Renee Bumb certified the nuisance claims for injunctive/declaratory relief in these cases to proceed as class claims (the "Class Nuisance Claims"), which are the only claims being addressed in the Class Settlement.

4. Why is there a settlement?

The Court did not decide in favor of the Class Representatives or DuPont in these cases. The Class Representatives, with the advice of Class Counsel, and DuPont have agreed to the terms of this Settlement to avoid the cost, delay and uncertainty that would come with additional litigation and trial. The Class Representatives and Class Counsel think the Settlement is best for Class Members because it provides certain relief now. The agreement to settle is not an admission of fault by DuPont. DuPont specifically disputes the claims asserted in these cases, including the claims for filtering or any other form of water treatment for PFOA.

WHO IS IN THE SETTLEMENT

In order to be included in this Settlement, you must be a Class Member.

5. How do I know if I am a part of the settlement?

Judge Bumb decided that everyone who fits one or both of the following descriptions is a Class Member:

Anyone who as of the date of this Notice owns or leases and occupies a home located within two miles of the Chambers Works plant who has a private well for drinking water that contains PFOA.

Anyone who as of the date of this Notice owns or leases and occupies a residence that has drinking water supplied by the Penns Grove Water System.

Because you have received this Notice of Class Action Settlement, you may be a member of one of the classes described above.

6. Which companies are included?

DuPont is the only Defendant included in this lawsuit.

THE SETTLEMENT BENEFITS

7. What does the settlement provide?

Certain provisions of the proposed Settlement are described in this notice, but the documents on file with the Court set forth the Settlement and its terms more fully. Those documents are available for you to review. The proposed Settlement is subject to Court approval.

The Settlement provides for benefits to the Class Members to resolve the Class Claims for injunctive relief.

Specifically, the Settlement provides for a total Settlement Amount of $8.3 million. The Settlement Amount will be used in part to pay one benefit option per Household. The benefit options are described below:

Each Household may file a single Claim Form electing one of two options: 1) Water Filter Option or 2) Incidental Payment Option.

OPTION 1:
Water Filter Option: Class Counsel have selected an in-home water filter system and replacement cartridges for the Filter Option. A Household submitting a timely and valid Claim Form (as described below in paragraph 8) electing the Water Filter Option will receive in the mail the in-home water filter system, at least 10 replacement cartridges, detailed installation instructions from the filter manufacturer, at least a $200 check to cover expenses relating to installation, and a toll-free telephone number for technical assistance from the manufacturer of the filter and cartridges over the life of the filter.

OPTION 2:
Incidental Payment Option: If a Class Household does not want the particular water filter package being offered under this Settlement (for example, a Class Member may already have a filter, may prefer bottled water, or prefer a different system), the Class Household may instead elect to receive a cash payment of approximately $800, reflecting the estimated approximate total value of the water filter package offered per Household, including the 10 replacement cartridges. A Household submitting a timely and valid Claim Form (as described below in paragraph 8) electing the Incidental Payment Option will receive a check in the mail.

The total value of the Settlement is $8,300,000.00. Attorneys' fees (not to exceed 33.3%) and litigation-related expenses (not to exceed $960,000) for Class Counsel, as well as administrative costs for this Settlement, will be paid out of the $8,300,000.00, subject to approval by the Court.

The precise number of replacement cartridges and the precise amount of the Incidental Payment Option will depend on how many Households participate in the Settlement and the total amount of costs, fees, and expenses that the Court approves for payment from the total Settlement amount. Class Counsel currently estimate that, assuming approximately 4800 Households participate, there should be funds sufficient to include at least 10 replacement cartridges in each Water Filter package, each of which are estimated to last between 6 months to one year.

Once the Court enters final approval, this Settlement provides that Class Members, in exchange for these class benefits, will release and agree not to sue DuPont for only the Class Claims for injunctive relief. This Class Settlement will not result in a release of any other claims.

DuPont denies the claims in these cases, including the demands for DuPont to provide filtration for PFOA. Accordingly, DuPont did not participate in the selection of the water filter system or any other aspect of the Water Filter Option and does not warrant any aspect of the Water Filter Option. If you have questions about the Filter Option, please do not contact DuPont. Instead, you should contact Class Counsel at:

Shari M. Blecher
Lieberman & Blecher, P.C.
10 Jefferson Plaza, Suite 100
Princeton, NJ 08540
(732) 355-1311

8. What do I have to do to receive class benefits?

If you want to participate in the settlement, you do not have to do anything until the Court approves the Settlement and the time for appeals expires or all appeals are resolved. However, once the Court approves the Settlement and the time for appeals expires or all appeals are resolved, you will need to fill out and submit a Claim Form to the Class Administrator. Following Court approval and resolution of all appeals, the Class Administrator will send each Household a Claim Form to complete, sign and return. The Claim Form will request information sufficient to verify

class membership and will ask the Household to select either the Filter Option or the Incidental Payments Option. You will have sixty (60) days from the date of the mailing of the Claim Form to return the fully completed and signed form. Your Claim Form must be postmarked no later than sixty (60) days from the date it was mailed to you.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The Court approved the law firms of Lieberman & Blecher, PC; Taft Stettinius & Hollister, LLP; Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.; Hill, Peterson, Carper, Bee & Deitzler, P.L.L.C. and Winter Johnson & Hill, PLLC to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

As part of the final approval of this Settlement, Class Counsel will ask the Court to approve payment of their reasonable attorneys' fees and expenses related to their work in these cases over the last approximately five years.

Class Counsel will make their request for Attorneys' Fees and Expenses through a motion that will be filed with the Court prior to date of the Fairness Hearing and prior to the deadline for Class Members to file their Objections.

The Court will determine whether the payments and the specific amounts requested at that time are appropriate. These amounts will come out of the Settlement Amount. DuPont does not oppose this request for fees and expenses.

OPTING OUT OF THE SETTLEMENT

11. Do I have to participate in the settlement?

No. If you do not want to participate in and be bound by the terms of the Class Settlement Agreement, you may elect to exclude yourself or "opt out" of the Settlement. If you choose to opt out of the Settlement, you will be giving up any right to claim any of the benefits being provided to Class Members under the Settlement. To opt out of the Settlement, you must complete the "Opt Out" Form on page 8 of this Notice and return it to the Class Counsel no later than May 9, 2011.

OBJECTING TO THE SETTLEMENT

If you don't agree with the Settlement or some part of it, you do not have to opt out. You can simply tell the Court that you do not agree with some or all of the proposed Settlement.

12. How do I tell the Court if I don't like the settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the *Rowe v. DuPont/Scott v. DuPont* Settlement and you must specifically state your objections. Be sure to include your name, address, telephone number, and your signature; indicate whether you are a current or former employee, agent, or contractor of DuPont or Class Counsel; and provide a detailed statement of the reason why you object to the Settlement. Mail the objection to the three places listed below, postmarked no later than May 9, 2011:

CLASS ACTION NOTICE

(1) William T. Walsh, Clerk of Court
United States District Court for the District of New Jersey at Camden
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Room 1050
Camden, NJ 08101

(2) Shari M. Blecher
Lieberman & Blecher, P.C.
10 Jefferson Plaza, Suite 100
Princeton, NJ 08540
Class Counsel

(3) Roy Alan Cohen, Esq.
Porzio Bromberg & Newman P.C.
100 Southgate Parkway
Morristown, N.J. 07962-10997
Counsel for DuPont

THE COURT'S FAIRNESS HEARING

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. on June 14, 2011, at the United States District Court for the District of New Jersey at Camden, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101 in Courtroom 3D. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also address Class Counsels' Motion for Attorneys' Fees and Expenses. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

14. Do I have to come to the hearing?

You do not have to come to the Fairness Hearing. Class Counsel will answer questions Judge Bumb may have, but you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

15. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Rowe v. DuPont, 06-1810-RMB* and *Scott v. DuPont*, 06-3080-RMB." Be sure to include your name, address, telephone number, and your signature. Your "Notice of Intention to Appear" must be postmarked no later than May 9, 2011, and must be sent to the three addresses listed in the "Objecting to the Settlement" section of this Notice.

IF YOU DO NOTHING

16. What happens if I do nothing at all?

If you do not opt out and the Court approves the terms of the Settlement, YOU MUST SUBMIT A TIMELY, VALID CLAIM FORM OR YOU WILL NOT RECEIVE ANY CLASS BENEFITS. If you do not opt out and you do not submit a Claim Form -- in other words, IF YOU DO NOTHING -- YOU WILL NOT GET A CLASS BENEFIT, and you will be forever barred from bringing a nuisance claim for injunctive relief against DuPont (as described in this Notice) because those claims are resolved under this Class Settlement.

CLASS ACTION NOTICE

GETTING MORE INFORMATION

17. How do I get more information?

DO NOT CALL the Court or DuPont with questions about this Settlement. If you have questions about this Settlement, you should contact Class Counsel at:

Shari M. Blecher
Lieberman & Blecher, P.C.
10 Jefferson Plaza, Suite 100
Princeton, NJ 08540
(732) 355-1311

The court record for these cases includes all documents that have been filed to date. This information is publicly available to you. You may review the court file during normal business hours at the Camden Courthouse located at:

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets Room 1050
Camden, NJ 08101

DATE: April 4, 2011

CLASS ACTION NOTICE

OPT OUT FORM

Read the Enclosed Legal Notice

Carefully Before Filling Out This Form

The undersigned does NOT wish to remain a member of the Settlement Classes certified in the consolidated cases of *Rowe, et al, v. E.I. du Pont de Nemours and Company*, Case No. 06-1810-RMB and *Scott v. E.I. du Pont de Nemours and Company*, Case No. 06-3080- RMB, in the United States District Court for the District of New Jersey, Camden Vicinage.

Date: _____ *(mm/dd/yy)*

Please provide the following contact information:

Name _____

Street Address _____

Address (cont.) _____

City _____

State/Province _____

Zip/Postal Code _____

Home Phone _____

E-mail _____

Are You A Current or Former DuPont Employee? Yes ___ No___

*Are there any other Class Members currently residing in this home who are **NOT** opting out of this Settlement?* Yes ___ No ___

If you want to exclude yourself from the class, you must fill in and return this form by mailing it before May 9, 2011, to:

Shari M. Blecher
Lieberman & Blecher, P.C.
10 Jefferson Plaza, Suite 100
Princeton, NJ 08540

A separate request for exclusion should be completed and timely mailed for each person electing to be excluded from the classes.

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RICHARD A. ROWE, MARY L. CARTER, MICHELLE E. TOMARCHIO, REGINA M. TROUT, ALLEN K. MOORE, CATHERINE A. LAWRENCE, AND KATHLEEN K. LEMKE, as parent and personal representative of DJL, Jr., a minor, individually and on behalf of themselves and all others similarly situated, Plaintiffs, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendants.	CIVIL ACTION NO.: 06-1810-RMB-AMD
And MISTY SCOTT, on behalf of herself and all others similarly situated, Plaintiff, vs. E. I. DUPONT DE NEMOURS AND COMPANY, Defendant.	CIVIL ACTION NO.: 06-3080-RMB-AMD

PLAINTIFFS' SECOND SUPPLEMENT TO JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Class Counsel for Plaintiffs in the above-captioned cases hereby submit this Second Supplement to the pending Joint Motion For Preliminary Approval of Class Action Settlement (*Rowe* Doc. 501/*Scott* Doc. 438) to address several

questions raised by the Court with respect to the pending Motion during a conference call with counsel for the Parties on February 28, 2011.[1]

First, with respect to the relationship between the estimated Incidental Payment Option amount and the estimated water Filter Option value, Plaintiffs' Class Counsel hereby confirm that they intend the Incidental Payment Option amount to represent, to the fullest extent reasonably practicable under the circumstances, the equivalent cash value of the complete water Filter Option package made available to each participating Class Household. That Filter Option package value (and corresponding Incidental Payment Option) is currently estimated to be at least approximately $800, assuming approximately 4800 participating Class Households, one Culligan RC-EZ-4 water filter system per package at approximately $100, at least 10 replacement cartridges at approximately $50 each, a $200 installation check, and free delivery of the water filter package to the Class Household.

Class Counsel anticipate that, if the Settlement is approved, a Class Administrator will be appointed who will (under the terms of a separate Class Administrator Agreement to be submitted to the Court for approval at the final Fairness Hearing (the "Administrator Agreement")): 1) distribute settlement benefit claim forms to each Class Household requiring each Household to specify

[1] Capitalized terms shall have the same meaning assigned in the Class Action Settlement, which is attached as Exhibit A to the pending Joint Motion for Preliminary Approval.

which settlement benefit option they prefer (Filter Option or Incidental Payment Option); 2) use the returned claim forms to determine the total number of participating Class Households; 3) determine the total number of participating Class Households who prefer the Filter Option versus the Incidental Payment Option ; 4) based on the number of Class Households selecting the Filter Option, negotiate the best available price for the necessary number of water filter systems, associated replacement cartridges, and bulk mailing rate for the water filter packages to the Class Households; 5) determine how many replacement cartridges (currently estimated to be at least 10 per Class Household, assuming all 4800 Households select the Filter Option and the replacement cartridges are purchased at the full, currently-advertised retail price of approximately $50 each) are to be included in each Filter Option package, based on the negotiated costs and available settlement benefits (taking into account the deduction of court-approved attorneys fees/expenses and Class Administrator expenses); and 6) set an equivalent cash value (based on those actual negotiated water filter system/replacement cartridges/postage rates) for the Incidental Payment Option checks.

Second, with respect to whether it is anticipated that all of the settlement benefits remaining in the settlement fund (after deducting court-approved attorneys fees/expenses and Class Administrator expenses) will be distributed to Class Households, or whether there will be some "remainder" left for processing, Class

Counsel contemplate that all of those settlement funds ultimately will be distributed to the Class Households on an equivalent, pro-rata basis. More specifically, it is anticipated that the Administrator Agreement will require the Class Administrator to determine what the total settlement benefit value will be per Class Household, based on the total number of Class Households returning claim forms (the total of those choosing the Filter Option plus those choosing the Incidental Payment Option) and the total amount of settlement funds remaining after deducting court-approved attorneys' fees/expenses and Class Administrator expenses. Using that total participating Class Household number and remaining settlement fund amount, the Class Administrator will determine (as described above) how many replacement cartridges can be included in a water filter package for the total number of participating Class Households (the total of those selecting the Filter Option plus those preferring the Incidental Payment Option), based on the negotiated water filter system rate, the negotiated replacement cartridge rate, the $200 per-Household installation check, and the negotiated per-Household water filter package delivery rate. (Those choosing the Incidental Payment Option will not actually get the water filter package but a check for the total per-Household value of the Filter Option package determined by the Class Administrator in this manner.)

If, after performing these per-Household calculations, the Class Administrator determines that there is some remaining amount of the settlement fund that is not quite enough to pay for one more replacement cartridge per participating Class Household at the negotiated replacement cartridge rate (the "Remainder"), Class Counsel anticipate that the Administrator Agreement will require the Class Administrator to allocate that Remainder per participating Class Household by adding the per-Household portion of the Remainder to the amount of the $200 installation check included within the Filter Option package. That amount would then be accordingly reflected in the Class Administrator's calculation of the total per-Household settlement benefits value used to set the equivalent Incidental Payment Option amount.

Class Counsel are currently working to identify an entity to serve as Class Administrator and to discharge the duties described above for a total fixed fee to be paid at the time attorneys' fees/expenses are paid from the settlement amount, so that the total amount of settlement funds available for distribution to the Class Households can be determined at the time Class claim forms are returned.

Respectfully submitted,

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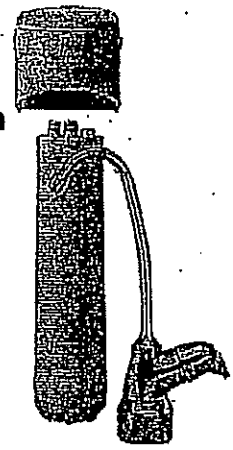
Exhibit 5

Culligan

Easy-Change Under-Sink Drinking Water Filter System Installation and Operating Instructions Model US-EZ

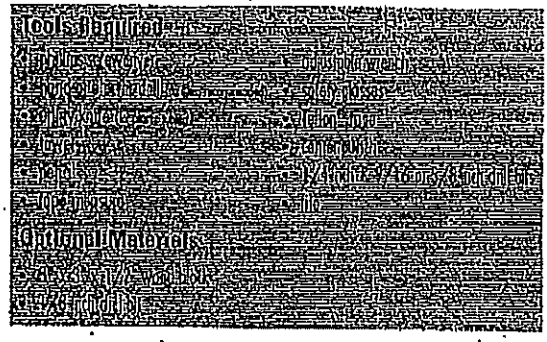


Specifications

Rating/Capacity:	Level 1	Level 2
Pressure Range:	30 – 100 psi (2.1 – 6.9 bar)	
Temperature Range:	40–100 °F (4.4 – 37.7 °C)	
Rated Service Flow:	0.5 gpm (1.9 lpm)	
Filter Capacity:	3000 gallons (11,356 l)	500 gallons (1893 l)
Turbidity:	5 NTU max	

Parts Included:

- filter head with built-in bracket
- filter cartridge
- mounting screws
- water supply adapter
- lead-free faucet and fittings
- 1/4-inch plastic tubing
- cartridge change reminder sticker



Precautions

⚠ WARNING: Do not use with water that is microbiologically unsafe or of unknown quality without adequate disinfection before or after the system. Systems certified for cyst reduction may be used on disinfected waters that may contain filterable cysts.

CAUTION: This filter must be protected from freezing, which can cause cracking of the filter and water leakage.

CAUTION: Because of the product's limited service life and to prevent costly repairs or possible water damage, we strongly recommend that the head of the filter be replaced every ten years. If the head of your filter has been in use for longer than this period, it should be replaced immediately. Date the top of any new head to indicate the next recommended replacement date.

CAUTION: Turn off water supply to head without cartridge if it must be left unattended for an extended period of time.

NOTE:

- For cold water use only.
- Make certain that installation complies with all state and local laws and regulations.
- The contaminants or other substances removed or reduced by the selected cartridge are not necessarily in your water.
- After prolonged periods of non-use (such as during a vacation) it is recommended that the system be flushed thoroughly. Let water run for 10 minutes before using.
- The filter cartridges used with this system have a limited service life. Changes in taste, odor, and/or flow of the water being filtered indicate that the cartridge should be replaced.

NSF

The US-EZ-1 is tested and certified by NSF International to NSF/ANSI Standard 42 for the aesthetic reduction of Chlorine Taste and Odor and Nominal Particulate Class III.

The US-EZ-3 is tested and certified by NSF International to NSF/ANSI Standard 42 for the aesthetic reduction of Chlorine Taste and Odor and Nominal Particulate Class I. Standard 53 for the reduction of Cysts, Turbidity, Lead, Uranium and Atrazine.

The US-EZ-4 is tested and certified by NSF International to NSF/ANSI Standard 42 for the aesthetic reduction of Chlorine Taste and Odor, Chloramines and Nominal Particulate Class I. Standard 53 for the reduction of Cysts, Lead, Mercury, VOC, MTBE and Turbidity.

H46153 Rev E 12/06

Installation

- For standard installation on 1/2-inch-14 NPS threads (most common thread on US kitchen faucets) cold water line.
- Please read all instructions and precautions before installing and using the US-EZ water filter.
- Numbered diagrams correspond with numbered steps.

1. Selecting the Faucet Location

NOTE: The drinking water faucet should be positioned with function, convenience and appearance in mind. An adequate flat area is required to allow faucet base to rest securely. The faucet fits through a 9/16-inch hole. Most sinks have pre-drilled 1¾" or 1½" diameter holes that may be used for faucet installation. If these pre-drilled holes cannot be used or are in an inconvenient location, it will be necessary to drill a 9/16-inch or 5/8-inch hole in the sink to accommodate the faucet.

⚠ WARNING: This procedure may generate dusts which can cause severe irritation if inhaled or come in contact with the eyes. The use of safety glasses and respirator for this procedure is recommended.

CAUTION: DO NOT ATTEMPT TO DRILL THROUGH AN ALL-PORCELAIN SINK. If you have an all-porcelain sink, mount the faucet in pre-drilled sprayer hole or drill through counter top next to sink.

CAUTION: When drilling through a counter top make sure the area below the drilled area is free of wiring and piping. Make certain that you have ample room to make the proper connections to the bottom of the faucet.

CAUTION: Do not drill through a counter top that is more than 1-inch thick.

CAUTION: Do not attempt to drill through a tiled, marble, granite or similar counter top. Consult a plumber or the counter top manufacturer for advice or assistance.

A) Line bottom of sink with newspaper to prevent metal shavings, parts or tools from falling down the drain.

B) Place masking tape over the area to be drilled to prevent scratches if drill bit slips.

C) Mark hole with center punch. Use a 1/4-inch drill bit for a pilot hole, then, using a 9/16-inch or 5/8-inch drill bit, drill a hole completely through the sink. Smooth rough edges with a file.

2. Mounting the Faucet

A) Insert spout (A) into faucet body (B). Tighten by screwing the spout nut (C) onto the threads on the faucet body.

B) Slide black rubber gasket (D) onto threaded faucet stem. Lower faucet stem through hole in sink.

C) Accessing the faucet from underneath the sink, slide metal washer (E) up the faucet stem, followed by the white plastic stem nut (F). Tighten with fingers to secure faucet to sink.

NOTE: do not use pliers to tighten stem nut. Pliers may strip the threads of the faucet stem.

3. Installing the Water Supply Adapter

The supply adapter fits 1/2-inch-14 NPS supply threads.

A) Turn off cold water supply line.

B) Turn on the cold water faucet and allow all water to drain from line.

C) Disconnect cold water line from 1/2-inch-14 NPS threaded stub on bottom of main faucet. NOTE: If it is too difficult to access the threaded stub on the bottom of the cold water faucet, see Alternate Installation on page 4.

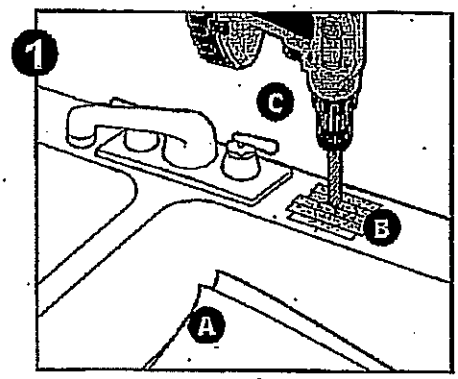
D) Apply Teflon® tape onto male threads of faucet stub and supply adapter. Screw the water supply adapter to the threaded faucet stub as shown.

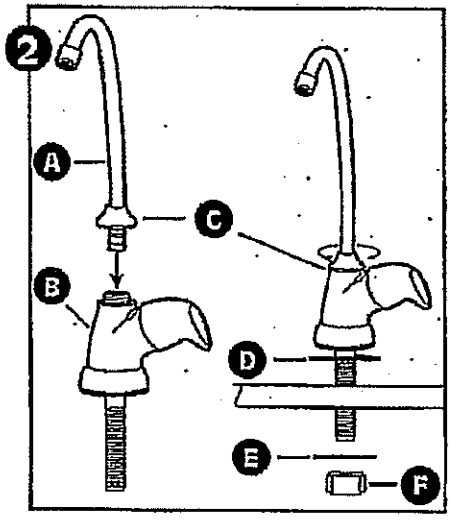
E) Using the nut that previously connected the cold water line to the faucet, screw the cold water line to the male supply adapter threads. Hand tighten nut and snug with wrench.

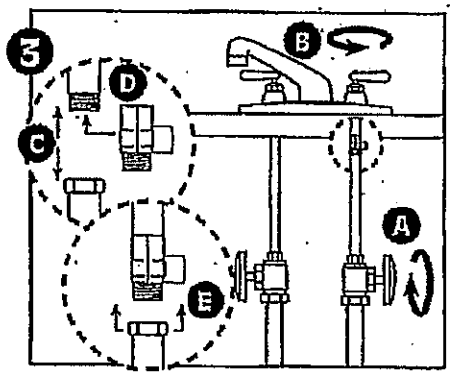
4. Mounting the Filter System

A) Select a location under the sink to mount the filter assembly. Choose a location where the filter will be easily accessible.

NOTE: Allow 1½-inches (38 mm) clearance below housing or 12-inch (305 mm) below filter head to enable filter cartridge changes.



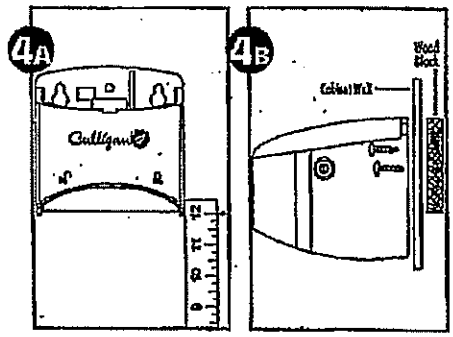




NOTE: Filter head should be mounted in vertical position, use mounting bracket as a template to mark screw locations. Mount filter head to marked location using screws.

CAUTION Filter head should be mounted on a stud or firm surface. The mounting bracket will support the weight of the filter and help prevent strain on the cold water line.

B) If filter assembly is mounted on a side wall next to drawers, remove drawers. Cabinet wall may be too thin to support filter assembly. We recommend that a 3" x 3" x 1/2" wood block be used on the back side of the cabinet to allow the screws to penetrate through the cabinet and into the wood block. This will allow the filter assembly to be fully supported. Using the filter head assembly as a template, drill two 1/4-inch holes in the side wall. Position the block of wood behind these two holes and drill two 1/8-inch holes into the block. Use the two screws provided to mount filter assembly head to side wall and on the block of wood.



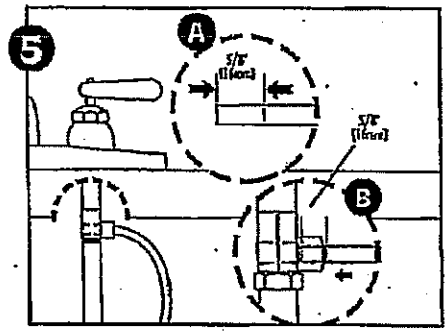
5. Connecting the Supply Adapter and Inlet of Filter

A) Determine the length of plastic tubing needed to connect the inlet (left) side of the filter with the supply adapter. Be sure to allow enough tubing to prevent kinking and cut the tubing squarely. Place a mark 5/8-inch (16 mm) from both ends of the tubing.

B) Wet tubing with water and insert into the supply adapter, 5/8-inch (16 mm) until mark is flush with fitting.

C) Wet tubing with water and insert into the filter inlet, 5/8-inch (16 mm) until mark is flush with fitting.

NOTE: Disconnecting the Tubing from the Quick-Connect Fittings. Routine maintenance and cartridge replacement will not require that you disconnect the tubing from the filter system; however, tubing may be quickly and easily removed from the fitting if necessary. First, turn off the water supply to the filter. Open faucet, then press in the grey collar around the fitting while pulling the tubing with your other hand.



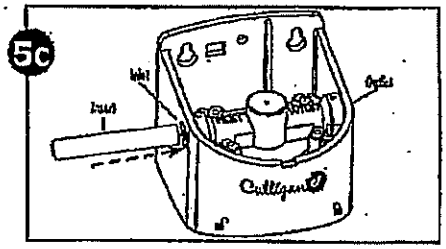
6. Connecting the Faucet

CAUTION Do not over-tighten compression nut. Use caution not to bend or crimp tubes when securing.

A) Determine the length of plastic tubing needed to connect the outlet (right) side of the filter with the faucet. Cut the tubing squarely.
CAUTION Do not bend or crimp tube when inserting.

B) Slide plastic compression nut **A** over tubing followed by the ferrule **B**, make sure the ferrule is oriented properly, then place insert **C** into the end of tubing.

C) Push the tubing firmly into the end of the faucet stem **D** and hand-tighten the compression nut onto threads until secure. Then tighten approximately 1/2 turn with a wrench.



7. Installing the Cartridge

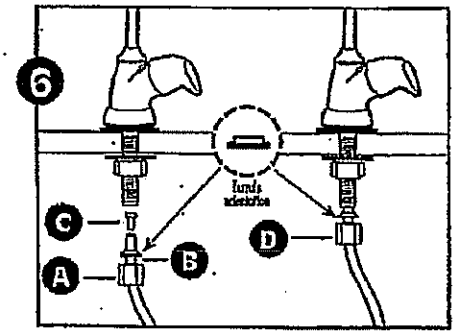
Hold cartridge from the bottom when installing or changing the cartridge. Use caution not to strain knuckles on bracket when locking the cartridge into place. Line up the arrow on the cartridge with unlocked padlock symbol on head. Insert cartridge and turn arrow to locked padlock symbol. See the diagrams in Filter Cartridge Replacement on page 4.

8. Putting the Filter into Operation

A) Turn on water supply valve. Check for leaks. If it leaks, see Troubleshooting.

B) Rotate handle of drinking water faucet counter-clockwise to "on" position. Allow water to run for 10 minutes to flush air and carbon fines (very fine black powder).

C) Check for leaks before leaving installation. If it leaks, see Troubleshooting.



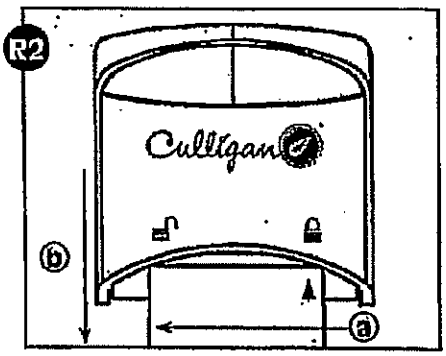
Filter Cartridge Replacement

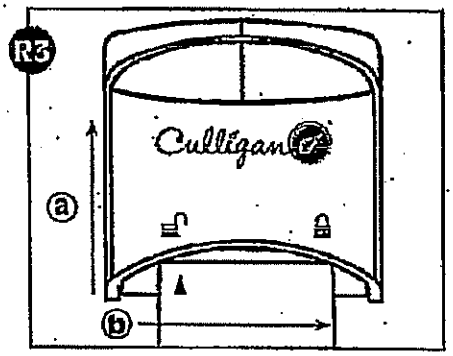
NOTE: It is recommended that the EZ-1 filter be replaced every year and the EZ-3/EZ-4 every 6 months, or when you notice a change in taste, odor, or flow of the water being filtered.

1) Relieve Water Pressure
   A) Turn off water supply to the filter and dispense water from drinking water faucet until water flow stops to relieve pressure.

2) Remove Old Cartridge
   NOTE: Place towel under the system to catch any water drips.
   A) Turn arrow from locked to unlocked position.
   B) Gently pull down to remove cartridge.

3) Install New Cartridge
   A) Line up arrow with unlocked position on head and insert cartridge.
   B) Turn to locked position.
   C) Turn on water and check for leaks. If it leaks, see Troubleshooting.
   D) Flush water through drinking water faucet for 10 minutes to remove carbon fines. Check for leaks before leaving installation. If it leaks, see Troubleshooting.

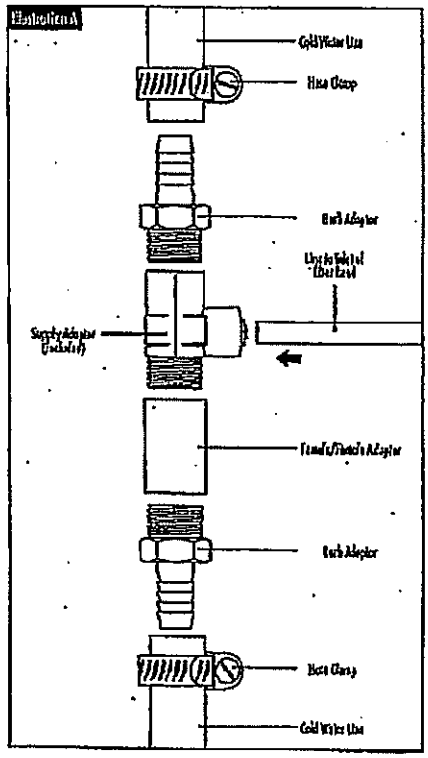




Alternate Installation

This alternate installation will require the purchase of additional fittings to be used with the water supply adapter. It will be necessary to remove a section of the cold water line to the main faucet. This cold water line is typically 1/2-inch inner diameter and 5/8-inch outer diameter plastic tubing. Adapter fittings for this tubing can be either barb type (based on the inner diameter), or compression or quick connect (based on the outer diameter).

See Illustration A for possible fitting combination. If barb fittings are used, hose clamps must accompany them. If compression fittings are used, tube inserts should also be used. Always use Teflon® tape on all male threaded connections.

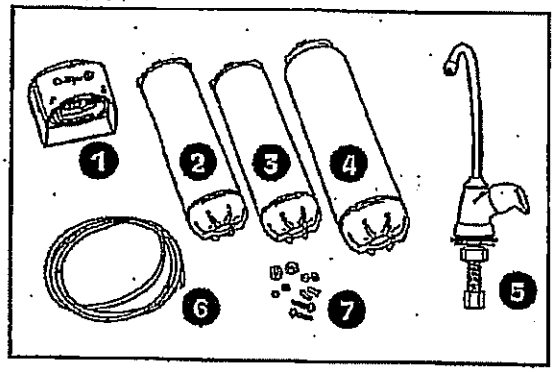


Replacement Parts

US-EZ

[illegible]	[illegible]
2	RC-EZ-1 filter cartridge Level 1 filtration
[illegible]	[illegible]
4	RC-EZ-4 filter cartridge Level 4 filtration
[illegible]	[illegible]
6	clear 1/4 inch tubing
[illegible]	[illegible]

Contact your area retailer or local water treatment professional for replacement cartridge pricing. For replacement parts, contact your nearest Culligan water filter retailer or call 1-888-777-7962.



Troubleshooting

Leaks:

...between head and cartridge

1) Turn off the water supply to the filter and dispense water from drinking water faucet until water and airflow stops.

2) Remove cartridge and inspect o-rings to make sure they are in place and clean.

3) Install cartridge and turn on water supply. If it still leaks, contact Technical Support at 1-800-721-9243 M-F 8:00 AM - 4:30 PM CST.

...from fittings

Turn off water supply to the filter and turn on drinking water faucet to release pressure in system. Press in the grey collar around the fitting while pulling the tubing with the other hand. Check if tubing is cut squarely or scratched. If tubing is scratched or uneven, cut off 1/2" to 5/8" and reinstall per step five of the installation; connecting the supply adapter and inlet of filter. Open the water supply valve, then close faucet and check for leaks. If the leaks persist, or if there are other leaks on the unit, turn off the water supply then call Technical Support at 1-800-721-9243.

Troubleshooting, continued

...on supply adapter connection

Turn off water supply valve and turn on drinking water faucet to release pressure in system.

Loosen leaking threaded fitting on supply adapter or pull out leaking tubing from fitting. Inspect to see if plastic tubing is scratched or supply adapter was properly attached. If tubing is scratched, cut off 1/2-inch to 5/8-inch and reinstall per Step Five: Connecting the Supply Adapter and Inlet of Filter. Reconnect tubing or tighten compression nut with fingers, then tighten nut snugly 1/2-turn with wrench. Turn on water supply valve and check for leaks.

...on faucet/tubing connection

Turn off water supply valve and turn on drinking water faucet to release pressure. Loosen and remove compression nut fitting on faucet stem. Check if tubing is cut squarely. Make sure tubing is inserted firmly into end of faucet stem, then retighten compression nut with fingers until secure, then tighten nut snugly 1/2-turn with wrench. Turn on water supply valve, then close faucet and check for leaks.

NOTE: If leaks persist, or if there are other leaks on system, turn off water supply. Call our Technical Support Department at 1-800-721-9243.

Performance Data

⚠ Do not use with water that is microbiologically unsafe or of unknown quality without adequate disinfection before or after the system. Systems certified for cyst reduction may be used on disinfected waters that may contain filterable cysts.

NOTE: Substances reduced are not necessarily in your water. Filter must be maintained according to manufacturer's instructions, including replacement of filter cartridges.

Model US-EZ

Important Notice: Read this performance data and compare the capabilities of this system with your actual water treatment needs. It is recommended that, before installing a water treatment system, you have your water supply tested to determine your actual water treatment needs.

This system has been tested according to NSF/ANSI 42 and 53 for the reduction of the substances listed below. The concentration of the indicated substances in water entering the system was reduced to a concentration less than or equal to the permissible limit for water leaving the system, as specified in NSF/ANSI 42 and 53

RC-EZ-1 Cartridges

This system has been tested according to NSF/ANSI 42 for the reduction of the substances listed below. The concentration of the indicated substances in water entering the system was reduced to a concentration less than or equal to the permissible limit for water leaving the system, as specified in NSF/ANSI 42.

Substance	Influent Challenge Concentration	Maximum Permissible Product Water Concentration	Reduction Requirements	Minimum Reduction	Average Reduction
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Chlorine	2.0 mg/L ± 10%		≥50%	94.8%	97.4%
Particulates (Particle Count Class II)	at least 10,000 particles/mL		≥85%	99.8%	99.9%

Flow Rate: 0.5 gpm (1.89 lpm) Capacity: 3000 gallons (11,355 l) or 12 months

Testing was performed under standard laboratory conditions, actual performance may vary.

RC-EZ-3 Cartridges

This system has been tested according to NSF/ANSI 42 and 53 for the reduction of the substances listed below. The concentration of the indicated substances in water entering the system was reduced to a concentration less than or equal to the permissible limit for water leaving the system, as specified in NSF/ANSI 42 and 53.

Substance	Influent Challenge Concentration	Maximum Permissible Product Water Concentration	Reduction Requirement	Minimum Reduction	Average Reduction
Chlorine	2.0 mg/L ± 10%		≥50%	98.2%	98.6%
Particulates (0.5 to 1 µm) Class I	at least 10,000 particles/mL		≥85%	99.8%	99.9%
Cyst	Minimum 50,000/L		99.95%	99.95%	99.9%
Turbidity	11 mg/L ± 1 NTU	0.5 NTU		96.4%	98.5%
Lead (pH 6.5)	0.15 mg/L ± 10%	0.010 mg/L		99.3%	99.3%
Lead (pH 8.5)	0.15 mg/L ± 10%	0.010 mg/L		94.8%	98.3%
Atrazine	0.009 mg/L ± 10%	0.003 mg/L		94.1%	94.1%
Lindane	0.002 mg/L ± 10%	0.0002 mg/L		94.5%	98.2%

Test Flow=0.5 gpm (1.89 lpm) Capacity=500 gallons (1893 l) or 6 months
Testing was performed under standard laboratory conditions; actual performance may vary.

RC-EZ-4 Cartridges

This system has been tested according to NSF/ANSI 42 and 53 for the reduction of the substances listed below. The concentration of the indicated substances in water entering the system was reduced to a concentration less than or equal to the permissible limit for water leaving the system, as specified in NSF/ANSI 42 and 53.

Substance	Influent Challenge Concentration	Maximum Permissible Product Water Concentration	Reduction Requirement	Minimum Reduction	Average Reduction
Chlorine	2.0 mg/L ± 10%		≥50%	98.5%	97.8%
Chloramines	3.0 mg/L ± 10%	0.5 mg/L		97.8%	98.0%
Particulates (0.5 to 1 µm) Class I	at least 10,000 particles/mL		≥85%	99.5%	99.9%
MTBE	0.015 ± 20%	0.003 mg/L	65%	98.8%	98.9%
Cyst	Minimum 50,000/L		99.95%	99.95%	99.9%
Turbidity	11 mg/L ± 1 NTU	0.5 NTU		96.6%	98.0%
Lead (pH 6.5)	0.15 mg/L ± 10%	0.010 mg/L		99.3%	99.3%
Lead (pH 8.5)	0.15 mg/L ± 10%	0.010 mg/L		94.1%	98.3%
Mercury (pH 6.5)	0.006 mg/L ± 10%	0.002 mg/L		96.3%	96.7%
Mercury (pH 8.5)	0.006 mg/L ± 10%	0.002 mg/L		96.6%	96.6%
Chloroform (VOC surrogate chemical)	0.300 mg/L ± 10%	0.015 mg/L		99.8%	99.8%

Flow Rate = 0.5 gpm (1.89 lpm); Capacity = 500 gallons (1893 l) or 6 months
Testing was performed under standard laboratory conditions; actual performance may vary.

Test Conditions:

Flow Rate	= 0.5 gpm
Inlet Pressure	= 60 psi (4.1 bar)
pH	= 7.5 ± 1
Temperature	= 68° F ± 5° F (20° C ± 2.5° C)

Operating Requirements:

Pressure	= 30 - 100 psi (2.1 - 6.9 bar)
Temperature	= 40° - 100° F (4.4° - 37.7° C)
Turbidity	= 5 NTU Max

⚠ WARNING: Do not use with water that is microbiologically unsafe or unknown quality without adequate disinfection before or after the system.

NOTE: Substances reduced are not necessarily in your water. Filter must be maintained according to manufacturer's instructions, including replacement of filter cartridges.

Performance Data - cont.

Organic Chemicals Included by Surrogate Testing:

Applies to US-EZ-4 Only

Substance	Influent challenge concentration mg/L	Maximum permissible product water concentration mg/L
Benzene	0.150	0.005
Carbofuran	0.180	0.001
Chlorobenzene	0.077	0.001
2,4-D	0.210	0.0017
o-dichlorobenzene	0.060	0.001
1,2-dichloroethane	0.038	0.0015
cis-1,2-dichloroethylene	0.170	0.0005
1,2-dichloropropane	0.040	0.001
Dinoseb	0.170	0.0007
ethylbenzene	0.068	0.001
Haloacetonitriles (HAN):		
dibromoacetonitrile	0.074	0.0066
dichloroacetonitrile	0.015	0.0003
1,1-dichloro-2-propanone	0.0072	0.0001
Heptachlor	0.25	0.00008
bromochloroacetone	0.040	0.001
Lindane	0.035	0.00007
pentachlorophenol	0.095	0.001
styrene	0.150	0.0005
tetrachloroethylene	0.080	0.001
2,4,5-TP (Silvex)	0.270	0.0016
1,2,4-trichlorobenzene	0.150	0.0005
1,1,2-trichloroethane	0.150	0.0005
trihalomethanes (bromine):		
bromoform	0.300	0.015
chlorodibromomethane		

Limited Warranty

This limited warranty applies to the filter housings only. It does NOT apply to any disposable filter cartridge, which has a life expectancy that varies with the water being filtered. This limited warranty covers defects in materials and workmanship only for two full years from original date of delivery. Culligan will replace any part which in Culligan's opinion is defective, unless: (1) any part of the system has been subjected to any type of tampering, alteration, or improper use after delivery, or (2) any part of the system has been repaired by anyone not approved by Culligan. Our obligation does not include the cost of shipment of materials. Culligan is not responsible for damage in transit, and claims for such damage should be presented to the carrier by the customer.

This product has been designed solely for use as a housing for a disposable filter cartridge. It is NOT warranted against freezing, and neither this product nor its parts is warranted against defects or deterioration caused by water for which this product was not expressly intended.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WHETHER ORAL OR ARISING BY USAGE OF TRADE OR COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS OR MERCHANTABILITY. THIS WARRANTY IS THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY. IN NO EVENT SHALL CULLIGAN BE LIABLE FOR ANY ANTICIPATED OR LOST PROFITS, INCIDENTAL DAMAGES, CONSEQUENTIAL CHARGES OR OTHER LOSSES, WHETHER BASED ON BREACH OF CONTRACT, TORTIOUS CONDUCT OR ANY OTHER THEORY, INCURRED IN CONNECTION WITH THE PURCHASE, INSTALLATION, REPAIR OR OPERATION OF THE OPAQUE FILTER HOUSING. CULLIGAN DOES NOT AUTHORIZE ANYONE TO ASSUME FOR IT ANY LIABILITY OR MAKE ON ITS BEHALF ANY ADDITIONAL WARRANTIES IN CONNECTION WITH THE OPAQUE FILTER HOUSING OR ANY PART THEREOF.

For servicing under this warranty, return any defective part to YOUR RETAILER within the two-year period referred to above.

IOWA RESIDENTS ONLY:

Store or seller's name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Seller's signature: _____

Customer's signature: _____ Date: _____

Culligan

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