

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM-FORMING FOAMS) Master Docket No.:
PRODUCTS LIABILITY LITIGATION) 2:18-mn-2873-RMG

CITY OF CAMDEN, et al.,)
) Civil Action No.:
) 2:23-cv-03230-RMG
)
 Plaintiffs,)
)
)
 -vs-)
)
)
 E.I. DUPONT DE NEMOURS AND COMPANY (n/k/a)
 EIDP, Inc.), et al.,)
)
)
 Defendants.)

**CONSENT MOTION TO AMEND EXHIBITS TO
MOTION FOR PRELIMINARY APPROVAL**

Proposed Class Counsel, with the consent of The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., Corteva, Inc., and E.I. DuPont de Nemours and Company (n/k/a/ EIDP, Inc.) (the “DuPont Entities”) and the States and other sovereign signatories below (the “Sovereigns”),¹ move to amend certain of the exhibits to the Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class and for Permission to Disseminate Class Notice (the “Preliminary Approval Motion”) (ECF No. 3). The grounds for this motion are as follows:

¹ The Sovereigns are Arizona, California, Colorado, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, and Wisconsin, as well as the District of Columbia, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

1. Proposed Class Counsel filed the Preliminary Approval Motion on July 10, 2023. The Preliminary Approval Motion attached as exhibits, among other things, a Proposed Order Granting Preliminary Approval of Settlement Agreement (the “Proposed Preliminary Approval Order”) (ECF No. 4-1) and a Class Action Settlement Agreement (the “DuPont Entities Settlement Agreement”) (ECF No. 4-2.)

2. After filing of the Preliminary Approval Motion, the Sovereigns requested additional time to communicate issues that they sought clarification upon, and if such items could not be adequately addressed, for additional time to respond to Plaintiffs’ Preliminary Approval Motion (ECF No. 14), which the Court granted (ECF No. 15).

3. Proposed Class Counsel, the DuPont Entities, and the Sovereigns have met and conferred about the issues raised by the Sovereigns concerning the DuPont Entities Settlement Agreement. Those discussions have resulted in the agreements set forth herein.

4. Proposed Class Counsel and the DuPont Entities have agreed to the clarifications and modifications of the DuPont Entities Settlement Agreement and the Proposed Preliminary Approval Order reflected in the attached redlines at Ex. A and Ex. B, respectively.

5. The Sovereigns have agreed that, with these clarifications and modifications, they do not oppose the Preliminary Approval Motion [2:23-cv-03230-RMG, ECF 3; 2:18-mn-2873, ECF No. 3393]. A short summary of the clarifications and modifications set forth in the attached redlines follows:

6. The parties agreed to revise the definition of Releasing Persons. Ex. A, ¶ 2.45.²

² Capitalized terms shall have the same meaning as set forth in the DuPont Entities Settlement Agreement and accompanying exhibits.

7. The parties agreed to extend the deadline for Requests for Exclusion to 90 days. Ex. A, ¶ 9.7.2. *See also* Ex. B. at 2 (revising the Order Granting Preliminary Approval of Settlement Agreement).

8. The parties agreed to amend the provision regarding Protection Against Claims-Over. Ex. A, ¶¶ 12.7.1, 12.7.5.

9. The parties agreed to a modification to the section of the Proposed Preliminary Approval Order regarding the Stay Order and Injunction. Ex. B at 3.

10. In addition, as part of this agreement, Proposed Class Counsel have confirmed to the Sovereigns that they have always intended to establish a settlement-specific website with information that will allow Class Members to derive a good faith estimate of what they may receive under the DuPont Entities Settlement Agreement if they participate in it, which is in process. This reference material is a good faith estimate only and not the actual settlement awards because allocations depend on data that is not publicly available, the extent of participation rates among Class Members is unknown, and the full extent of Impacted Water Sources is unknown. These factors are unknowable until all Claims Forms have been submitted and processed; however, the reference material will nonetheless prove useful in providing a good faith estimate and will be available on the settlement-specific website.

Accordingly, the parties and the Sovereigns respectfully request that the Court consider the attached clarifications and modifications as part of the proposed DuPont Entities Settlement Agreement and the Proposed Preliminary Approval Order.

Dated: August 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF on this 7th day of August 2023 and was thus served electronically upon counsel of record.

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Exhibit A: Redlines to Settlement Agreement

...

2. DEFINITIONS

2.45. “Releasing Persons” means (a) Settlement Class Members; (b) each of their past, present, or future, direct or indirect, predecessors, successors (including successors by merger or acquisition), departments, agencies, divisions, districts, parents, subsidiaries, affiliates, boards, owners, or operators, other than a State; (c) any past, present, or future officer, director, employee, trustee, board member, shareholder, representative, agent, servant, insurer, attorney, subrogee, predecessor, successor, or assignee of any of the above, individually or in their official, corporate, or personal capacity; (d) any Person, other than a State or the federal government, ~~anyone~~ in privity with or acting on behalf of any of the foregoing, including in a representative or derivative capacity; (e) any Person, other than a State or the federal government, that is legally responsible for funding (by statute, regulation, other law, or contract) a Settlement Class Member or has authority to bring a Claim on behalf of a Settlement Class Member, or to seek recovery for harm to a Public Water System within the Settlement Class or the ability of such system to provide safe or compliant Drinking Water; and (f) any Person, other than a State or the federal government, seeking recovery on behalf of a Settlement Class Member or seeking recovery for harm to a Public Water System within the Settlement Class or the Public Water System’s ability to provide safe or compliant Drinking Water.

...

9. APPROVAL AND NOTICE

...

9.7.2 All Requests for Exclusion must be filed and served on such schedule as the Court may direct. In seeking Preliminary Approval, the Parties will request that the deadline for submission of Requests for Exclusion shall be set on a date no less than ninety ~~sixty~~ ~~(90~~~~60)~~ calendar days after commencement of dissemination of the Notice. Requests for Exclusion submitted by any Settlement Class Member to incorrect locations shall not be valid.

...

12. RELEASE, COVENANT NOT TO SUE, AND DISMISSAL

12.7. Protection Against Claims-Over.

12.7.1. The Order Granting Final Approval will specify that the Settlement is a good-faith settlement that bars any Claim by any Non-Released Person against any Released Person for contribution, indemnification, or otherwise seeking to recover ~~all or a portion of~~ any amounts paid by or awarded against that Non-Released Person to any ~~Settlement Class Member or~~ Releasing Person by way of settlement, judgment, or otherwise (a “Claim-Over”) on any Claim that would be a Released Claim were such Non-Released Person a Settling Defendant, to the extent that a good-faith settlement (or release thereunder) has such an effect under applicable law.

...

[12.7.5 The protection against claims-over provided in Section 12.7 shall not apply to Claims brought by a State.](#)

Exhibit B: Redlines to Proposed Preliminary Approval Order

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V. PROCEDURE FOR REQUESTS FOR EXCLUSION AND OBJECTIONS

...

15. Any Settlement Class Member wishing to opt out of the Settlement Class and Settlement must submit a written Request for Exclusion to the Notice Administrator, and serve a copy of such written request on Class Counsel and Settling Defendants' Counsel at the addresses set forth in the Notice. Such written request must be received by the Notice Administrator no later than the date ~~ninety~~^{sixty} (90~~60~~) calendar days following the commencement of the Notice Plan (as described in Paragraph 13 of this Order), which is the last day of the opt out period. The last day of the opt out period is _____, 2023.

....

VII. STAY ORDER AND INJUNCTION

28. All litigation in any forum brought by or on behalf of a Releasing Person and that asserts a Released Claim, and all Claims and proceedings therein, are hereby stayed as to the Released Persons, except as to proceedings that may be necessary to implement the Settlement. All Releasing Persons are enjoined from filing or prosecuting any Claim in any forum or jurisdiction (whether federal, state, or otherwise) against any of the Released Persons, and any such filings are stayed; provided, however, that this Paragraph shall not apply to any Person who files a timely and valid Request for Exclusion beginning as of the date such Request for Exclusion becomes effective. [This Paragraph also shall not apply to any lawsuits brought by a State in any forum or jurisdiction.](#) The provisions of this Paragraph will remain in effect until the earlier of (i) the Effective Date, in which case such provisions shall be superseded by the provisions of the Order Granting Final Approval, and (ii) the termination of the Settlement Agreement in accordance with its terms. This Order is entered pursuant to the Court's Rule 23(e) findings set forth above, in aid of its jurisdiction over the members of the proposed Settlement Class and the settlement approval process under Rule 23(e).