

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: E.I. DU PONT DE NEMOURS
COMPANY C-8 PERSONAL INJURY
LITIGATION**

CASE NO. 2-13-MD-2433

JUDGE EDMUND A. SARGUS, JR.

**MAGISTRATE JUDGE
ELIZABETH P. DEEVERS**

This document relates to:

*Carla Marie Bartlett v. E.I. du Pont de Nemours
and Company, Case No. 2:13-cv-170.*

CASE MANAGEMENT ORDER NO. 10-A

FINAL PRETRIAL ORDER

The Court held a final pretrial conference in this case on September 9, 2015, at 1:00 p.m., pursuant to Fed. R. Civ. P. 16.

I. APPEARANCES

For Plaintiff: Robert Bilott, Gary J. Douglas, Michael Papantonio, Michael London, David Butler, Timothy O'Brien, Roger Denton, Ned McWilliams, Rebecca Newman, Chris Paulos, Ashley Brittain Landers, David Haynes, Nina Towle, Alicia Ellsayerd

For Defendant: Damond Mace, Stephen Fazio, Stephanie Niehaus, C. Craig Woods, Aaron T. Brogdon

II. NATURE OF ACTION

- A. This is an action for: Personal Injuries
- B. The jurisdiction of the Court is invoked under Title 28, United States Code, Section 1332.
- C. The jurisdiction of the Court is not disputed.

III. TRIAL LENGTH

The estimated length of trial is: 4 weeks

IV. AGREED STATEMENT AND LISTS

A. General Nature of the Claims of the Parties

1. Plaintiffs' Claims: Carla Bartlett is pursuing personal injury claims against DuPont for compensatory and punitive damages alleging that her kidney cancer was caused by the consumption of her drinking water which was contaminated with C8 that was discharged from DuPont's Washington Works Plant. Plaintiff's claims are based in negligence, battery, and negligent infliction of serious emotional distress.

2. Defendants' Claims: DuPont claims that it did not breach any duty of care owed to Plaintiff. At all relevant times, no employee of DuPont thought that their actions were likely to cause any harm to Mrs. Bartlett, or any similarly situated person in the community, and no employee of DuPont intended any harmful or offensive contact. DuPont's conduct was reasonable based on what it knew or should have known at all relevant times. DuPont denies any liability to Mrs. Bartlett.

With respect to Plaintiff's claimed injury, Mrs. Bartlett's kidney cancer was not proximately caused by any conduct by any DuPont employee. DuPont also asserts that Plaintiff's cancer was successfully removed nearly 20 years ago, and that her compensable damages, if any, are limited by the amounts claimed in response to DuPont's discovery requests, and must be adequately proven at trial.

DuPont further contends that at no time was its conduct such that punitive damages would be proper.

B. Uncontroverted Facts

Plaintiff contends that the following facts are uncontroverted or uncontested:

1. DuPont has owned and operated the Washington Works Plant site at issue at all times relevant to this case.
2. DuPont released C8 from the Washington Works Plant, including into the Ohio River as well as into the air.
3. Carla Bartlett's consumption of drinking water for at least one year containing 0.05 ppb or more of C8 is sufficient to cause kidney cancer.
4. Carla Bartlett consumed drinking water from the Tappers Plains-Chester Water District in Ohio.
5. Carla Bartlett was diagnosed with kidney cancer and had surgery to remove a cancerous tumor from one kidney.
6. DuPont remains wholly and solely responsible for any verdict and/or judgment that is rendered in this case in favor of Carla Bartlett.

DuPont's Response: Defendant does not contest the facts as set by Plaintiff in items nos. 1, 2, 4, or 5. Defendant contests Item 3. Finally, Item 6 is not a factual issue for trial and has already been addressed by the Court on several prior occasions (including at the prior motions *in limine* hearing) and is unnecessary and inappropriate for inclusion in the final pre-trial order.

C. Contested Issues of Fact and Law

The parties' respective positions concerning the many contested issues of law and fact have been extensively set forth in prior motion practice under Fed. R. Civ. Pro. 16, 42, and 56, as well as in numerous motions *in limine*. Through this Final Pretrial Order neither party waives any of its prior positions or arguments, all of which are expressly preserved, and all issues for appeal are preserved. The following is a summary of some of the principal contested issues.

1. Contested Issues of Fact:

Plaintiff contends that the contested issues of fact remaining for decision are:

- Whether Carla Bartlett consumed for at least one year, water containing at least 0.05 ppb C8.
- Whether a reasonably prudent person or corporation would have anticipated that some risk of harm or injury, but not necessarily Plaintiff's precise injury, was likely to result from DuPont's release of C-8 from the Washington Works Plant.
- Whether DuPont used reasonable care with respect to its release of C8 from the Washington Works Plant.
- Whether the greater weight of the evidence shows that DuPont knew with substantial certainty that its intentional acts of releasing C8 from its Washington Works Plant would result in the invasion, or presence of C8 into Carla Bartlett's body.
- Whether the invasion or presence of C8 into Carla Bartlett's body without her permission or consent would be considered harmful or offensive to a reasonable person.
- Whether the greater weight of the evidence shows that DuPont negligently acted in a manner that more likely than not resulted in serious emotional distress or mental anguish to Carla Bartlett.
- Whether Carla Bartlett's kidney cancer and related injuries were more likely than not the result of her exposure to C8.
- What amount of money will compensate Carla Bartlett for her injuries and damages, taking into consideration any physical pain and suffering and mental anguish that the greater weight of the evidence shows was more likely than not experienced by Carla Bartlett.
- What amount of money will compensate Carla Bartlett for any permanent disability or loss of enjoyment of life that the greater weight of the evidence shows to have been suffered by her as a result of her injuries.

- Whether there is clear and convincing evidence that DuPont's actions or omissions demonstrate a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm, thus supporting an award of punitive damages.

Defendant contends that the contested issues of fact remaining for decision are:

- Whether a reasonably prudent person would have anticipated that injury of the type suffered by plaintiff in 1997 was likely to result from Defendant's conduct that occurred prior to her injury with respect to DuPont's use of C8 at its Washington Works plant.
- Whether Defendant's conduct toward Plaintiff prior to her illness in 1997 fell below the applicable standard of care at the relevant time.
- Whether Defendant's conduct with respect to the use, handling, and disposal of C8 prior to Plaintiff's illness in 1997 was reasonable under the relevant circumstances and facts at the relevant time.
- Whether Defendant intended to cause and knew with substantial certainty that release of C8 from the Washington Works plant would cause a harmful or offensive contact with Plaintiff, and whether a harmful or offensive contact with Plaintiff proximately resulted from Defendant's conduct.
- Whether it was reasonably foreseeable at the relevant time that serious emotional distress to Plaintiff would result from Defendant's conduct, whether Defendant acted unreasonably in response to a foreseeable risk of serious emotional distress to Plaintiff, and whether Plaintiff suffered severe emotional distress proximately caused by Defendant's conduct.
- Whether Plaintiff's kidney cancer was specifically and proximately caused by the C8 she consumed in drinking water from the Tupperware Plains-Chester Water District.
- Whether Plaintiff, as a direct and proximate cause of Defendant's conduct, suffered any compensable damages, and if so, how much.
- Whether Defendant acted with actual malice toward Plaintiff.

2. Contested Issues of Law:

Plaintiff contends that the contested issues of law in addition to those implicit in the foregoing issues of fact, are:

- Set forth in Section VII below

Defendant contends that the contested issues of law, in addition to those implicit in the foregoing issues of fact, are:

- The effect of the *Leach* settlement, if any, on specific causation.
- Other legal issues raised in the prior motion practice and in Section VII below.

D. Witnesses

1. Plaintiff will call, or will have available at the trial the following live, fact witnesses:

- Carla Bartlett (Plaintiff)

Plaintiff may call the following live, fact witnesses:

- John Bartlett: As Plaintiff's spouse, he may testify as to Mrs. Bartlett's damages, including her pain and suffering, her consumption of drinking water, and any and all topics discussed during his deposition.
- Robert Bahnson, M.D., F.A.C.S.: As Plaintiff's treating physician, he may provide fact testimony pertaining to Plaintiff's treatment and nephrectomy, and any and all topics discussed during his deposition.
- Jean Rettos, D.O.: As Plaintiff's treating physician, she may provide fact testimony pertaining to Plaintiff's treatment, and any and all topics discussed during her deposition.
- Don Poole: He may testify as to the years and dates of the installation of the Tupper Plains-Chester Water Main on Lottridge Road, Coolville, Ohio, and any and all topics discussed during his deposition.
- DuPont's Custodian(s) of Record
- DuPont's Corporate Representative(s) at Trial

Plaintiff reserves the right to call, or not call, any or all of the witnesses identified above and also reserves the right to limit the direct examination on any of the witnesses listed. Plaintiff also reserves the

right to call one or more of the witnesses (fact or expert) who DuPont calls at trial or has identified on its witness list.

2. In the absence of reasonable notice to opposing counsel to the contrary, Defendant currently expects that it will call or have available at trial:

- Paul Bossert- Mr. Bossert was the Plant Manager of the Washington Works plant from approximately 2000 through 2005. Mr. Bossert is primarily expected to testify about: the Washington Works plant generally, products made and related issues, C8 and its use at the Washington Works Plant, the source of C8 used by DuPont at the Washington Works plant, communications with employees, the community and others about C8, and related matters.
- Mike Dourson, Ph.D, DABT - Dr. Dourson is the President of Toxicology Excellence for Risk Assessment (TERA). Dr. Dourson is primarily expected to testify about: his observations and participation in the work of the C8 Assessment of Toxicity Team (CATT), the process used, participants, and information considered by the CATT, the formal report issued by the CATT, the screening levels for C8 that were issued, and related matters.
- John Flaherty- Mr. Flaherty is an analytical chemist who was the operations manager for Exygen when DuPont retained Exygen in 2001 to test samples for C8. If called, Mr. Flaherty is primarily expected to testify about DuPont's retention of Exygen, the development of the "LC/MS/MS" method to analyze water samples for C8, his observations and experiences related to C8 and the testing work Exygen performed, the quality assurance and quality control practices he used to perform the testing of the samples, communications with DuPont employees, and related matters. Mr. Flaherty has been deposed and may testify live or by deposition.
- Andrew Hartten- Mr. Hartten is a DuPont employee who has been involved with some of the sampling for C8. He is primarily expected to testify concerning the collection of data relating to C8 in water, soil and other media, the testing methods that were used over time and DuPont's efforts to get accurate and precise information; communications with federal and state regulatory agencies; his work with and related to the Groundwater Investigation Steering Team (GIST), and related matters. Depending on Court rulings, he may also testify regarding filtration of C8 from drinking water and related matters.
- Dawn Jackson- Ms. Jackson worked in community relations and public affairs at the Washington Works plant. She is primarily expected to testify about her involvement and DuPont's practices

concerning communications with employees, the public and others, various meetings and communications with employees and the public concerning C8, communications between DuPont and local water districts concerning C8, and related matters.

- Anthony Playtis, Ph.D.-Dr. Playtis served in various industrial hygiene and occupational health roles at the Washington Works plant. He is primarily expected to testify about the Washington Works plant, industrial hygiene and occupational health practices, C8 sampling efforts in and around the Washington Works plant, blood sampling, monitoring of employee health, communications with 3M, and related issues.
- Robert Rickard, Ph.D, DABT- Dr. Rickard is a fact witness and an expert witness. He is and has been a toxicologist at DuPont. Dr. Rickard is primarily expected to testify about DuPont's toxicology program, efforts to understand the toxicology and likely health effects of C8, the manner in which DuPont set exposure guidelines and the meaning of those guidelines, DuPont's evaluation of C8 over the years, communications with employees, 3M, regulators, the public and others concerning C8, and related matters. Dr. Rickard has also been designated as an expert witness, and will testify consistent with his expert report, prior depositions, and the prior rulings of the Court.
- Rodger Zipfel- Mr. Zipfel worked as an engineer and supervisor at Washington Works. Mr. Zipfel is primarily expected to testify about the Washington Works plant, the use of C8 at Washington Works, industrial and occupational health practices concerning C8, evaluations of C8, efforts to control emissions of C8, efforts to develop alternatives to C8, and related matters.

Defendant may call if the need arises:

- George Ainsley - Mr. Ainsley served in several positions, including in the public affairs group, at the Washington Works plant. If called, Mr. Ainsley is expected to primarily testify about his work history and experiences at DuPont, DuPont's practices concerning public affairs, external communications concerning C8, and related matters. Mr. Ainsley has been deposed and may testify live or by deposition.
- Richard Anguillo - Mr. Anguillo was the Vice President and General Manager of DuPont's fluoroproducts business unit. If called, he is primarily expected to testify concerning his employment history and experiences at DuPont, DuPont's fluoroproducts business unit, and DuPont's response to C8-related

matters during his tenure. Mr. Anguillo has been deposed and may testify live or by deposition.

- Robert Bahnson, M.D.-Dr. Bahnson is one of Mrs. Bartlett's treating physicians. If called, he is expected to testify regarding Mrs. Bartlett's kidney cancer diagnosis and treatments as well as post-surgery medical surveillance. He is also expected to testify concerning other non-cancer medical conditions of Mrs. Bartlett. Dr. Bahnson has been deposed, and may testify live or by deposition.
- Jon W. Bartlett – Mr. Bartlett is the husband of the plaintiff. If called, he is expected to testify about plaintiff's kidney cancer diagnosis and treatments, plaintiff's other medical conditions, and the impact of those conditions on her daily life. Mr. Bartlett has been deposed and may be called live or by deposition.
- Michael Baker- Mr. Baker is the Chief of the Ohio EPA's Division of Drinking and Ground Waters. If called, he is expected to primarily testify about the Ohio EPA's review of the environmental and health impacts of C8 in drinking water, Ohio EPA's communications with DuPont, Ohio EPA's involvement in the CATT and GIST, and related matters.
- Robbin Banerjee - Mr. Banerjee served as the Teflon business unit superintendent at Washington Works. If called, Mr. Banerjee is expected to testify concerning his employment history and experiences at DuPont, especially with regard to the Washington Works plant and C8. Mr. Banerjee was deposed and may testify live or by deposition.
- Edward Baranoski- Mr. Baranoski is a former employee of the Washington Works plant with many years' experience in the Teflon production area. If called, he is primarily expected to testify concerning his employment history, his work experience with C8-containing and other materials at Washington Works, communications from DuPont concerning health and safety issues, and related issues. Mr. Banerjee was deposed, and may testify live or by deposition.
- Dr. James Becker - Dr. Becker is a professor at Marshall University. If called, he is primarily expected to testify about community meetings concerning C8, his contacts with ATSDR and others concerning C8, communications concerning the results of the CAT Team's investigation, and related matters. Dr. Becker has been deposed and may testify live or by deposition.

- David Boothe - Mr. Boothe served in a variety of management and other roles both at the Washington Works plant and in Wilmington, DE. If called, he is primarily expected to testify about the Washington Works plant, the use and handling of C8 at the Washington Works plant, DuPont's evaluation of the health risks related to C8 exposure, external communications concerning C8, and related matters. Mr. Boothe has been deposed and may testify live or by deposition.
- John Bowman- Mr. Bowman formerly served as an in-house attorney to DuPont. If called, he is primarily expected to testify concerning his employment history and experiences, including non-privileged matters involving DuPont's response to alleged health and/or environmental impacts associated with C8, and related matters. Mr. Bowman has been deposed and may testify live or by deposition.
- James Cox- Mr. Cox was the General Manager of the Lubeck Public Service District. If called, he is primarily expected to testify concerning his employment history, his experiences as an employee of the Lubeck Public Service District, communications with DuPont and Lubeck customers concerning C8, and related matters. Mr. Cox has been deposed and may testify live or by deposition.
- Mark Cullen- Dr. Cullen was a member of DuPont's Epidemiology Advisory Board. If called, Dr. Cullen is primarily expected to testify concerning his experiences serving on DuPont's Epidemiology Review Board, communications with DuPont, communications by DuPont concerning C8, and related matters.
- Barbara Dawson- Ms. Dawson was an industrial hygienist at DuPont's Chambers Works. If called, she is primarily expected to testify about her employment history and experiences, communications with the Washington Works' plant related to C8, monitoring of employees for C8, the handling of C8, and her involvement in C8 health and Safety issues generally. Ms. Dawson has been deposed and may testify live or by deposition.
- Ted Dunkelberger - Mr. Dunkelberger was an employee of the Weinberg Group. If called, Mr. Dunkelberger is primarily expected to testify as to the Weinberg Group's attempts to secure work relating to C8 from DuPont, DuPont's rejection of the proposal that was made by Weinberg Group, and related matters. Mr. Dunkelberger has been deposed and may testify live or by deposition.

- William Fayerweather, Ph.D.-Dr. Fayerweather is an epidemiologist who was employed by DuPont. If called, Dr. Fayerweather is primarily expected to testify concerning his employment history and experiences, DuPont's corporate epidemiology program, epidemiological investigations of Washington Works employees and workers exposed to compounds containing C8, and related matters. Dr. Fayerweather has been deposed and may testify live or by deposition.
- Kathleen Forte - Ms. Fortewas the Vice President for Public Affairs at DuPont. If called, she is primarily expected to testify concerning her employment history and experiences, DuPont's public affairs practices, external communications relating to C8, and related matters. Ms. Forte has been deposed and may testify live or by deposition.
- Charles Holliday - Mr. Holliday was the Chief Executive Officer of DuPont. If called, he is primarily expected to testify about DuPont's use of C8, DuPont's evaluation of the health risks associated with C8 exposure, external communications concerning C8, and related matters. Mr. Holliday has been deposed and may testify live or by deposition.
- Gerald Kennedy, DABT- Mr. Kennedy is a toxicologist who was employed by DuPont. If called, Mr. Kennedy is primarily expected to testify about his work history and experiences, DuPont's toxicology program in general, DuPont's investigations into the toxicological and health effects of C8, and related matters. Mr. Kennedy has been deposed and may testify live or by deposition.
- Robin Leonard, Ph.D.-Dr. Leonard is an epidemiologist who was employed by DuPont. If called, Dr. Leonard is primarily expected to testify concerning her employment history and experiences, DuPont's corporate epidemiology program, epidemiological investigations of Washington Works employees and workers exposed to compounds containing C8, and related matters. Dr. Leonard has been deposed and may testify live or by deposition.
- John Lichiello- Mr. Lichiello was the Executive Director of the Wood County Solid Waste Authority. If called, he is primarily expected to testify about his communications and interactions with DuPont, his participation on the Community Responsible Care Team, and related matters.
- John Little - Mr. Little was the Plant Manager of Washington Works from approximately 1996 to 2000. If called, Mr. Little is primarily expected to testify about his employment history and

experiences, the Washington Works plant, C8 and its use at Washington Works, communications with employees and the community about C8, and related matters. Mr. Little has been deposed and may testify live or by deposition.

- Michael McCabe - Mr. McCabe is a principal of McCabe & Associates. If called, he is primarily expected to testify concerning his work with DuPont on C8-related issues, external communications related to C8, and related matters. Mr. McCabe has been deposed and may testify live or by deposition.
- Dervilla McCann, M.D. - Dr. McCann is a physician who served on DuPont's Health Advisory Board. If called, she is primarily expected to testify concerning her background and experience, her experiences on DuPont's Health Advisory Board, DuPont's communications about C8, her interactions with persons at DuPont, and related matters.
- Robin Ollis-Stemple - Ms. Ollis-Stemple is in the public affairs group at the Washington Works plant. If called, she is primarily expected to testify concerning her work history and experiences, DuPont's communications practices, DuPont's external communications relating to C8, and related matters. She has been deposed and may testify live or by deposition.
- William Packard - Mr. Packard was the General Manager of the Lubeck Public Service District. If called, he is primarily expected to testify concerning his employment history, his experiences with the Lubeck Public Service District, the history, design and operation of the Lubeck Public Service District, communications with DuPont, government agencies and the public concerning C8, and related matters.
- Donald Poole - Mr. Poole was the General Manager of the Tupper Plains-Chester Water District. If called, he is primarily expected to testify concerning his employment history, his experiences with the Tupper Plains-Chester Water District, the history, design and operation of the Tupper Plains-Chester Water District, communications with DuPont, government agencies and the public concerning C8, and related matters. Mr. Poole has been deposed and may testify live or by deposition.
- David Ramsey - Mr. Ramsey worked in a variety of roles at Washington Works, including production, human relations, safety health and environment ("SHE"), and external relations. If called, he is primarily expected to testify concerning his employment history, his work experience, C8 and its use at Washington Works,

communications with employees and the community about C8, and related matters. Mr. Ramsey has been deposed and may testify live or by deposition.

- James Rankin- Mr. Rankin is a former DuPont employee who worked in the Teflon production area for many years. If called, he is primarily expected to testify concerning his employment history, his work experience, his experience with C8-containing and other materials at Washington Works, communications from DuPont concerning health and safety issues, and related issues.
- Bernard Reilly- Mr. Reilly was an in-house attorney employed by DuPont. If called, he is primarily expected to testify concerning his employment history and experiences, including non-privileged matters involving DuPont's response to alleged health and/or environmental impacts associated with C8, and related matters. Mr. Reilly has been deposed and may be called live or by deposition.
- Robert Ritchey- Mr. Ritchey was a senior environmental control consultant at Washington Works. If called, he is primarily expected to testify regarding his work history and experiences, environmental health and safety issues relating to C8, management of the Washington Works central environmental group, site regulatory guidance, agency interaction and reporting requirements for environmental-related issues, and related issues. Mr. Ritchey has been deposed and may be called live or by deposition.
- David Rurak - Mr. Rurak is a DuPont employee. If called, he is primarily expected to testify concerning his employment history and experiences, the sourcing of C8 used by DuPont, DuPont's use of C8, DuPont's evaluation of the alleged health effects of C8, and related matters. Mr. Rurak has been deposed and may be called live or by deposition.
- H.R. Scott- Mr. Scott was a West Virginia University Extension Agent. If called, Mr. Scott is primarily expected to testify about his communications and interactions with DuPont, his service on the Community Responsible Care Team, his involvement in claims made by the Tennant's concerning the health of their cattle, and related matters.
- Diane Shomper- Ms. Shomper was a public affairs specialist for DuPont. If called, she is primarily expected to testify regarding her employment history and experiences, DuPont's communications practices, her involvement in external communications relating to C8, and related matters. Ms. Shomper has been deposed and may testify live or by deposition.

- Walter Stewart- Mr. Stewart is a retired DuPont employee. If called, Mr. Stewart is primarily expected to testify concerning his work history and experiences, efforts at the Washington Works plant to control C8 emissions, identification of C8 outside the Washington Works, external communications concerning C8, and related matters. Mr. Stewart has been deposed and may testify live or by deposition.
- Dr. Greg Sykes- Dr. Sykes is both a fact and an expert witness. His expert opinions are set forth in his expert report that has been served and filed with the Court. If called, he is primarily expected to testify about the investigation of the claims that cattle were injured as a result of run-off from a landfill, his observations as part of the "Cattle Team," his toxicological evaluations of C8, and related matters. Dr. Sykes has been deposed and may testify live or by deposition.
- Judy Walrath, Ph.D. - Dr. Walrath is an epidemiologist who was employed by DuPont. If called, Dr. Walrath is primarily expected to testify concerning her employment history and experiences, DuPont's corporate epidemiology program, epidemiological investigations of Washington Works employees and workers exposed to compounds containing C8, and related matters. Dr. Walrath has been deposed and may be called either live or by deposition.
- David Watkins- Mr. Watkins was the Groundwater Program Manager and Regulatory Affairs manager at the West Virginia Department of Environmental Protection (WV DEP"). If called, he is primarily expected to testify about WV DEP's investigation into C8, WV DEP's communications concerning C8, communications and interactions between WV DEP and DuPont, and related matters.
- R. Clifton Webb- Mr. Webb worked in various positions in DuPont's public affairs group. If called, Mr. Webb is primarily expected to testify concerning his employment history and experiences related to C8, as well as communications with the public, regulators, governmental agencies and others concerning C8, and related matters. Mr. Webb has been deposed and may be called either live or by deposition.
- Dan Webber-Mr. Weber worked in the environment group at the Washington Works plant. If called, he is primarily expected to testify concerning his involvement in environmental issues related to C8, interactions with regulators and others, communications about C8, and related matters. He has been deposed and may be called either live or by deposition.

- David Wegman - Dr. Wegman was on DuPont's Epidemiology Advisory Board. If called, he is primarily expected to testify concerning his experience serving on DuPont's Epidemiology Review Board, communications with DuPont, communications by DuPont concerning C8, and related matters. Dr. Wegman has been deposed and may testify live or by deposition.
- Steve Williams - Mr. Williams is a geologist with the Ohio Environmental Protection Agency. If called, he is primarily expected to testify concerning Ohio EPA's involvement with the CATT and Groundwater Investigation Steering Team ("GIST"), his interactions and communications with DuPont involving investigations into C8, and related matters.
- Michael Zeto - Mr. Zeto was the Chief of the West Virginia Department of Environmental Protection's ("WV DEP") Office of Environmental Enforcement. If called, he is expected to testify about the WV DEP's investigation into C8 outside of Washington Works, communications with DuPont and others concerning C8, and related matters.

DuPont reserves the right to call, or not call, any or all of the witnesses identified above and also reserves the right to limit the direct examination on any of the witnesses listed. DuPont also reserves the right to call one or more of the witnesses (fact or expert) who Plaintiff calls at trial or has identified on her witness list.

3. In the event other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the Court at least five (5) days prior to trial.
4. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior to notice to the other party. Questions frequently arise as to whether a witness will offer rebuttal testimony or is more appropriately designated as part of the case-in-chief. If questions arise as to the nature of a witness' testimony, the Court will err on the side of required disclosure five (5) days prior to trial of rebuttal witnesses. If no disclosure is made, the Court shall not permit such witness to testify.

Note: *Only witnesses listed in the Final Pretrial Order will be permitted to testify at the trial, except witnesses called solely for the purpose of impeachment or for good cause shown.*

E. Expert Witnesses

Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed to the other side.

1. Plaintiff intends to call at trial:
 1. Amter, Steve, M.S.
 2. Bahnson, Robert, M.D., F.A.C.S.
 3. Johnson, Robert, Ph.D. (punitive phase only)
 4. MacIntosh, David, Sc.D., C.I.H.
 5. Margulis, Vitaly, M.D., F.A.C.S.
 6. Petty, Stephen, P.E., C.I.H., C.S.P.
 7. Rettos, Jean, D.O. (treating physician only; via deposition)
 8. Siegel, Michael, M.D., M.P.H.
 9. Smith, Jim, Ph.D., C.P.C.
2. Defendant intends to call at trial:
 1. Samuel M. Cohen, M.D. Ph.D.
 2. Robert W. Rickard, Ph.D.
 3. Shane A. Snyder, Ph.D.

Defendant may call at trial:

1. John M. Graham, M.D.
2. Greg P. Sykes, Ph.D.
3. Stephen T. Washburn
4. Douglas L. Weed, M.D., Ph.D.
5. Thomas C. Voltaggio

Counsel have filed a resume or curriculum vitae of each expert's qualifications that may be found on the docket.

For Plaintiff Expert Witnesses:

1. Amter, Steven, M.S.: (ECF No. 3441-1, Attachment A)
2. Bahnson, Robert, M.D., F.A.C.S.: (ECF No. 3441-2, Appendix A)
3. Johnson, Robert, Ph.D. (punitive phase only): (ECF No. 3441-4, Ex. B)
4. MacIntosh, David, Sc.D., C.I.H.: (ECF No. 3441-11, Attachment 1)
5. Margulis, Vitaly, M.D., F.A.C.S.: (ECF No. 3441-5, Appendix A)
6. Petty, Stephen, P.E., C.I.H., C.S.P.: (ECF No. 3441-3, Appendix B)
7. Siegel, Michael, M.D., M.P.H.: (ECF No. 3441-8, Appendix B)
8. Smith, James, Ph.D., C.P.C.: (ECF No. 3441-9, Section VIII)

For Defendant Expert Witnesses:

1. Samuel M. Cohen, MD., Ph.D (ECF No. 2807, Ex. A)
2. John M. Graham, M.D. (ECF No. 2807, Ex. B)
3. Robert W. Rickard, Ph.D. (ECF No. 2807, Ex. D)

4. Shane A. Snyder Ph.D.(ECF No. 2807, Ex. E)
5. Greg P. Sykes, Ph.D. (ECF No. 2807, Ex. F)
6. Stephen T. Washburn (ECF No. 2807, Ex. H)
7. Thomas C. Voltaggio (ECF No. 2807, Ex. G)
8. Douglas L. Weed, M.D.,Ph.D (ECF No. 2807, Ex. I)

F. Depositions

During trial, reading of depositions frequently presents problems that can be eliminated by advance discussion and preparation. The pretrial order shall list depositions to be read into evidence and any objections thereto identifying the objecting party, portions objected to, and the basis for the objections. All irrelevant and redundant matter and all colloquy between counsel in the deposition must be eliminated when the deposition is read. See also the requirements of Fed. R. Civ. P. 26(a)(3)(B).

Testimony of the following witnesses may or will be offered by deposition/videotape.

BY PLAINTIFF:

1. Banerjee, Robin
2. Baranoski, Edward
3. Bowman, John
4. Buck, Robert
5. Dunkleberger, David
6. Fayerweather, William
7. Forte, Kathleen
8. Gallagher, Andrew
9. Little, John
10. Reilly, Bernard
11. Skaggs, Craig
12. Staats, DeeAnn
13. Stewart, Walter
14. Webb, Clifton

BY DEFENDANT:

1. Mr. Jon Bartlett (may call)
2. Dr. Bruce Karrh
3. Dr. Jean Rettos
4. DeeAnnStaats

G. Exhibits

Needless Court time is taken up in the marking of exhibits during trial.

Accordingly, the exhibit list should be prepared prior to trial and set forth in the pretrial order. Exhibits that are to be admitted without objection should be listed first,

then followed by a listing of exhibits to which there may be objections, noting by whom the objection is made (if there are multiple adverse parties), the nature of the objection, and the authority supporting the objection.

Exhibit markers should be attached to all exhibits at the time they are shown to opposing counsel during the preparation of the pretrial order. A supply of marking tags for exhibits may be obtained from the courtroom deputy clerk. They should be attached to the lower right-hand corner whenever possible. See also the requirements of Fed. R. Civ. P. 26(a)(3)(C).

Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the pretrial order, with the exception of exhibits to be used solely for the purpose of impeachment.

Exhibit lists should be attached as appendices to the pretrial order as follows:

Appendix B Joint Exhibits
Appendix C Plaintiff Exhibits
Appendix D Defendant Exhibits
Appendix E Third-Party Exhibits

1. Plaintiff's Contentions

Plaintiff has prepared and pre-marked all trial exhibits with "P1" and "P2" designations. Each separate page of an exhibit is also marked for ease of reference by the Court and Witnesses. The exhibit marks have been placed prominently on the exhibits in such a fashion so as not to interfere with the exhibits' substance/contents. Plaintiff's trial exhibits identified on **Appendix C** (attached) have been provided to DuPont's counsel pursuant to the terms of Case Management Order No. 9. Plaintiff amended her trial exhibit list due to ongoing discovery, as permitted, on June 26, August 20, August 28, and September 3, 2015. Defendant amended its trial exhibit list on September 3, 2015. Plaintiff and Defendant both objected to the other's amendments on September 3, 2015.

Plaintiff will provide electronic copies (PDF format) of her exhibits to the Court saved to a fire-wire compatible hard drive along with an Excel and PDF formatted and searchable exhibit list.

Plaintiff contends that significant exhibit disputes still exist. For a detailed history of Plaintiff's efforts to resolve exhibit disputes and a description of the nature of DuPont's objections to Plaintiff's trial exhibits, Plaintiff refers the Court to the pending Motion to Compel DuPont's Responses to Requests for Admissions submitted to the Special Master on August 21, and filed with the Court on August 28, 2015 [ECF No. 4205]. To date, DuPont has not withdrawn or removed any objection to any of Plaintiff's trial exhibits, nor has DuPont stipulated or admitted to the foundation or authenticity of any exhibit to which it has raised such objections, nor has any basis for these objections been provided to Plaintiff. On August 28, 2015, Plaintiff provided an updated exhibit list to DuPont based upon the Court's guidance at the hearings on

August 24 and 25, 2015, withdrawing exhibits subject to motions *in limine* granted by the Court. Plaintiff continues to review and withdraw exhibits accordingly, and submitted proposed redactions to DuPont, as per the Court's rulings on DuPont's Motions *in limine* Nos. 22 & 23, on September 2, 2015. Plaintiff has proposed and continues to be open and willing to negotiate categorical stipulations to these objections and other evidentiary issues prior to trial. DuPont has not responded to Plaintiff's request for categorical stipulations.

2. DuPont's Contentions

DuPont contends that the parties have engaged in many discussions aimed at reaching agreement regarding admissibility of trial exhibits. Unfortunately, Plaintiffs' recent Motion to Compel paints an inaccurate, misleading and one-sided picture of those discussions. The fact is that Plaintiff has objected to nearly 90% of DuPont's listed trial exhibits, including over 85% of the "common" exhibits that appear on both parties' lists. Plaintiff has also taken a "hide the ball" tactic, by listing many thousands of exhibits on Plaintiff's list that will never be used at the Bartlett trial. In an effort to efficiently focus the meet and confer efforts, and allow both parties to preserve objections with minimal involvement by the Court, nearly two months ago, on July 10, DuPont sent Plaintiffs' counsel a focused, pragmatic proposal (which has been very successfully been used in numerous similar complex trials), which DuPont's counsel subsequently described to the Court at the July 22 status conference. In accordance with this proposal, DuPont provided a sampling of approximately 200 documents from DuPont's exhibit list to Plaintiff's counsel several weeks ago, but Plaintiffs have not provided any similar sample of documents actually expected to be used at trial. DuPont's proposal was that the parties would narrow any remaining disputes for the narrower set of documents, get rulings from the Court on any remaining disputes, and then use those rulings as guidance on other documents, while allowing each side to preserve objections.

DuPont further contends that Plaintiff has failed to properly withdraw numerous exhibits from her exhibit list, despite the recent motion *in limine* rulings (as evidenced by her recent Motion to Compel, by which Plaintiff seeks to compel many admissions regarding each of the approximately 6,000 documents originally identified), and in fact Plaintiff has continued to serve multiple untimely "supplemental" exhibit lists after the deadline set forth in CMO 9, which include numerous exhibits that were not the result of any ongoing discovery. Plaintiff complains about DuPont's authenticity objections, but fails to explain that DuPont has only raised authenticity objections to approximately 800 of Plaintiff's 6,000 exhibits. Plaintiff has also failed to explain that there are many issues with handwritten notes, anonymous authors, third party documents and other authenticity issues with these proposed exhibits.

DuPont has marked and produced exhibits in accordance with the applicable Case Management Orders and will provide an electronic set to the Court.

3. Appendices

- The parties have not agreed upon any Joint Exhibits. Accordingly, **Appendix B** is not attached.
- Attached hereto as **Appendix C** is Plaintiff's trial exhibit list.

- Attached hereto as **Appendix C-1** is DuPont's objections to Plaintiff's trial exhibits.
- Attached hereto as **Appendix D** is DuPont's trial exhibit list.
- Attached hereto as **Appendix D-1** is Plaintiff's objections to DuPont's trial exhibits.

H. Stipulations

None; Counsel has not made any stipulations pursuant to the Federal Rules.

I. Completion of Discovery

Plaintiff contends, given the nature of this multidistrict litigation proceeding, all discovery is not yet completed. Discovery does remain as it pertains to certain financial aspects pertaining to DuPont and its spin-off with Chemours, all of which are in pending motions, and which require ongoing supplementation given inconsistent positions by DuPont, Chemours, and their counsel in statements with the Court, the SEC, and prospective investors. Other areas of open discovery include Plaintiff's requests for depositions of witnesses never previously identified but who appeared on DuPont's trial witness list. Plaintiff reserves the right to depose those witnesses if/when they are even called to testify at trial, pursuant to this Court's Orders, given the fact that DuPont never previously identified material witnesses in any prior disclosure until the pretrial order.

Defendant contends that case-specific discovery in the Bartlett case is closed, with the exception of certain outstanding records requests that were made on September 1, 2015.

V. MODIFICATION

The Final Pretrial Order may be modified at or prior to the trial of this action to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

VI. JURY INSTRUCTIONS

A. Jury Instructions from the Court

The Court will prepare preliminary and general instructions. The parties may obtain an example of the Court's general instructions from Debra Hepler, Chief Judge Sargus' Administrative Assistant. The parties shall concentrate their efforts on the case-specific instructions.

B. Proposed Jury Instructions from the Parties

The parties shall submit jointly one set of proposed jury instructions which contains the parties agreed upon case-specific instructions, and, in the event the parties cannot agree on an instruction, each party's own individual proposed case-specific instruction. To this end, counsel shall adhere to the following procedures:

1. The parties served their proposed jury instructions on each other on **August 31, 2015**, with additional proposed modifications on September 3, 2015.
2. Counsel will meet, confer and agree on proposed case-specific jury instructions.
3. If, after concerted good faith effort, the parties are unable to agree upon a particular case-specific instruction, each party shall propose its own version. Plaintiff's version shall be presented first, immediately followed by Defendant's version of the jury instruction, complete with pinpoint citations to binding authority. Each version, Plaintiff's and Defendant's, shall appear together on one page for ready comparison. Versions of longer instructions (over one page) shall appear one after another. A party may indicate its general objection to the giving of the proposed instruction.
4. Proposed case-specific jury instructions shall be submitted to the Court on or before **September 7, 2015**.

All instructions shall be concise, understandable and neutral. Further, counsel shall at minimum agree on a common index and the proposed instructions from all parties shall correspond to the index.

For jury instructions concerning federal law, the Court prefers that the parties use the latest edition of Hon. Edward J. Devitt, Hon. Charles B. Blackmar, Michael A. Wolff, and Kevin F. O'Malley, Federal Jury Practice and Instructions (West). For instructions on Ohio law, the Court prefers that the parties use the latest edition of Ohio Jury Instructions (Anderson). For instructions on West Virginia Law, the Court prefers the latest version of the instructions published by Mathew Bender & Company. The Court, however, welcomes any effort by counsel to make the instructions from these sources more direct, understandable, and concise.

VII. REMAINING ISSUES AND OTHER MATTERS

The following legal issues must be resolved before the beginning of trial:

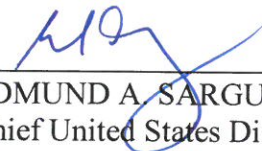
1. Whether Plaintiff may refer to the evidence challenged in DuPont's Motion *in Limine* No. 7 relating to The Weinberg Group.

2. Remaining Motions *in Limine* and issues regarding Motions *in Limine* Orders, including Footnote 1 within Motions *in Limine* Order No. 2 [ECF No. 4206].
3. Defendant's Motion *in Limine* No. 26 Concerning the Calculation of Punitive Damages [ECF No. 4208].
4. The substance of limiting instructions discussed during the Motion *in Limine* hearing and addressed in Pretrial Order No. 38.
5. Issues regarding Trial Exhibits.
6. Issues regarding Deposition Designations.

Counsel brings the following additional matters to the Court's attention:

1. Outstanding Motion to Compel related to Chemours Spinoff [ECF Nos. 4106, 4127, 4137, 4195, 4204]
2. DuPont's Motion to apply Ohio Tort Reform Act [ECF Nos. 3975, 4125, 4182]
3. Plaintiff anticipates filing motion(s) to preclude and or limit various DuPont fact witnesses' trial testimony in accordance with Court's prior rulings on these matters and given the broad scope of their proposed fact testimony as set forth by DuPont in its summary. Further, Plaintiff intends to file a motion to preclude any fact witnesses identified by DuPont whose purported testimony will be, in sum and substance, to tout the safety of the Washington Works Plant and how they were exposed to higher levels of C-8 yet they do not have kidney cancer. Plaintiff will be filing a motion to preclude this testimony in light of these witnesses appearing for DuPont as "will call" fact witnesses on the proposed Final Pretrial Order. Allowing this testimony from a parade of witnesses is wholly improper on so numerous levels, including but not limited to the fact that it will cause a trial within a trial, Plaintiff has not had (and will need) discovery of these witnesses' health histories, including all medical records from the witnesses, Plaintiff will also be entitled to show how many people have been adversely effected by C-8 exposure to rebut and challenge the claims from these people that they somehow were not affected, including being permitted to do discovery of all other DuPont workers' health histories, and would also be able to offer evidence of the other 3,000, plus class members who all have probable link diseases to rebut and challenge the claims of DuPont's hand-picked employees who claim that they do not have any C-8 linked diseases. Plaintiff also will file a motion regarding the designation of Dr. Bruce Karrh as a deposition, as DuPont has never identified page and line designations in accordance with the Court's deadlines pertaining

to deposition designations. DuPont notes that the plaintiff is mischaracterizing the potential scope of direct examination of these “may call” witnesses.


EDMUND A. SARGUS, JR.
Chief United States District Judge

Mike Papantonio / signed by permission, plb
Trial Counsel for Plaintiff

Stephen Fazio / signed by permission, plb
Trial Counsel for Defendant