

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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

Case No. 2:13-md-2433

JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Elizabeth P. Deavers

This document relates to: **ALL ACTIONS**

**CASE MANAGEMENT ORDER NO. 3**

**Service of Plaintiffs' Complaints, Defendant's Abbreviated Answer  
and Affirmative Defenses, Initial Disclosures**

1. The Court hereby issues the following Case Management Order relating to Plaintiffs' service of process of their Complaints, Defendant E. I. du Pont de Nemours and Company ("Defendant")'s responsive pleading obligations in MDL 2433, and the Civil Rule 26(a)(1) initial disclosure obligations of all parties.

**I. Scope of Order**

2. This Order applies to all actions transferred to *In Re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* ("MDL 2433") by the Judicial Panel on Multidistrict Litigation ("JPML") pursuant to its Order of April 8, 2013; all related actions originally filed in or removed to this Court; and any "tag-along" actions transferred to this Court by the JPML pursuant to Rules 6.2 and 7.1 of the Rules of Procedure of the Panel, subsequent to the filing of the final transfer order by the Clerk of this Court (collectively "Member Actions").

**II. Service of Plaintiffs' Complaints**

3. Following the entry of this Order, Plaintiffs' counsel with cases pending in this MDL based on complaints filed after entry of this Order ("New Complaints") shall serve their New Complaints by email on the following two lawyers, with return read receipt, to the following email addresses: 1) Erin Mariani: Mary-Erin.Mariani@usa.dupont.com; and 2) Aaron Brogdon: aaron.brogdon@squiresanders.com. This will constitute effective service on Defendant. Should Defendant fail to serve an Answer or other response to the Complaint within the 90 days allowed, before filing for default, Plaintiff's counsel shall meet-and-confer with defense counsel and allow 10 business days to cure or resolve any claimed default before filing any default motion.

**III. Abbreviated Answer and Affirmative Defenses**

4. Defendant may move, plead, or otherwise respond to any New Complaint. Following the entry of this Order, if Defendant desires to submit an Answer as its responsive pleading in any member action in MDL 2433, Defendant may file and serve an Abbreviated Answer in the general form attached hereto as Exhibit A. This Abbreviated Answer shall operate as a general denial by Defendant of all allegations in the Complaint, with the exception of admission of any allegations that Defendant's principal place of business and state of incorporation is Delaware.

5. Defendant's Abbreviated Answer shall also contain the affirmative defenses which Defendant desires to assert and allege in any particular individual case. Notwithstanding this provision, the affirmative defense of subject matter jurisdiction is

never waived.

6. Defendant's Abbreviated Answer, motion, or other response to a Complaint must be filed and served no more than 90 days from service of Plaintiff's New Complaints. The 90 days will run from the date that the emails referred in paragraph 3 above were sent to the attorneys named in paragraph 3. Defendant shall serve an Abbreviated Answer to any outstanding complaints that were served at the time of the July 1, 2013 status conference on or before August 16, 2013, but Defendant shall file at least one non-Abbreviated, full length Answer for every Plaintiffs' lawyer's firm with an existing Complaint on file as of July 1, 2013, on or before August 16, 2013.

7. Plaintiffs shall be permitted to move to strike any Affirmative Defenses asserted in the Abbreviated Answer or full-length Answer as they may deem appropriate, subject to any pre-motion requirements that the Court may mandate.

8. Plaintiffs' agreement to allow Defendant to file an Abbreviated Answer in any case shall not be deemed to waive or impair any argument or position of any Plaintiff that any fact, issue, or other matter, including any matter falling within the scope of Civil Rule 36, has been otherwise admitted, undisputed, or uncontroverted or should otherwise be deemed admitted, undisputed, or uncontroverted for any purpose.

9. As will be covered in a subsequent Order, at the time any case is designated as a representative or bellwether case, designated as a trial case, or remanded back to its home jurisdiction for final pre-trial and trial work, it is currently anticipated that Defendant will file a non-Abbreviated, full length, Amended Answer. However, Defendant shall not be permitted to assert additional Affirmative Defenses, unless application to the Court is made and any requisite legal requirements are fully

established and permitted by the Court. The timing of service of such Amended Answer(s) will be governed by a subsequent CMO and/or agreement of the parties.

**IV. Federal Civil Rule 26(a)(1) Initial Disclosures:**

10. Plaintiffs' Initial Disclosure requirements are hereby suspended in light of the PSC's agreement that Plaintiffs will provide Fact Sheets, documents and applicable records authorization forms, which will be governed by a subsequent CMO.

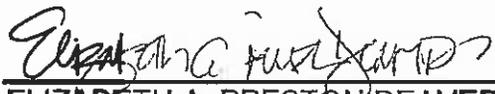
11. Defendant shall serve a master set of Initial Disclosures on or before July 29, 2013, and otherwise Defendant's Initial Disclosure obligations are hereby suspended.

**IT IS SO ORDERED.**

Date: 8-1-2013

  
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EDMUND A. SARGUS, JR.  
UNITED STATES DISTRICT JUDGE

Date: 8-1-2013

  
\_\_\_\_\_  
ELIZABETH A. PRESTON DEAVERS  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**  
**ABBREVIATED ANSWER**

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

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

CASE NO. 2:13-md-2433

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE ELIZABETH P.  
DEAVERS

This document relates to: [Plaintiff Name] v. E. I. du Pont de Nemours and Company, Case No. [Case Number].

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**ABBREVIATED ANSWER**

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Pursuant to Section III of Case Management Order No. [redacted], defendant E. I. du Pont de Nemours and Company ("DuPont"), by and through its undersigned counsel, hereby answers and avers in response to the Complaint of Plaintiff [Plaintiff Name] (the "Complaint") as follows:

**FIRST DEFENSE**

For its First Defense to the Complaint, DuPont admits that it is a Delaware corporation with its principal place of business in Wilmington, Delaware, and that it owns and operates a manufacturing facility in Wood County, West Virginia known as "Washington Works," but expressly denies all other allegations set forth in the

Complaint, including those for which it lacks information or knowledge sufficient to form a belief as to their truth.

### **ADDITIONAL DEFENSES**

As additional defenses to the Complaint, DuPont asserts and incorporates herein the following:

#### **SECOND DEFENSE**

Plaintiff's Complaint, and each count thereof, fails to state a claim upon which relief can be granted.

#### **THIRD DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute(s) of limitations and/or laches.

#### **FOURTH DEFENSE**

Plaintiff's damages, if any, were proximately caused by acts of God and/or by intervening and/or superseding actions by others, over which DuPont had no control.

#### **FIFTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine(s) of waiver and/or estoppel.

#### **SIXTH DEFENSE**

Pursuant to the Class Action Settlement Agreement in *Jack W. Leach, et al. v. E. I. du Pont de Nemours and Company*, Civ. No. 01-C-608 (Cir. Ct. Wood Co. W. Va. Nov. 17, 2004), entered into by DuPont and the *Leach* class members, Plaintiff's claims, to the extent that Plaintiff is a class member, are barred by *res judicata*, the Full Faith and Credit Clause of the United States Constitution, and/or estoppel from obtaining various forms of relief sought in the Complaint.

**SEVENTH DEFENSE**

Plaintiff, to the extent that he or she is a class member, is barred from obtaining the relief, in whole or in part, sought in the Complaint because Plaintiff, as a Settling Party to the Class Action Settlement Agreement in *Jack W. Leach, et al. v. E. I. du Pont de Nemours and Company*, Civ. No. 01-C-608 (Cir. Ct. Wood Co. W. Va. Nov. 17, 2004), released various claims against DuPont arising from DuPont's use of PFOA at Washington Works, and/or has already obtained relief and/or received consideration for such release.

**EIGHTH DEFENSE**

Any damages alleged by Plaintiff in the Complaint were proximately caused in whole or in part by persons or entities other than DuPont and over whom DuPont had no control.

**NINTH DEFENSE**

Whatever damages Plaintiff may have suffered, if any, were not reasonably foreseeable by DuPont at the time of the conduct alleged.

**TENTH DEFENSE**

The alleged damages, if any, to which Plaintiff may be entitled must be reduced in proportion to the comparative and/or contributory fault or negligence of other parties and/or actors.

**ELEVENTH DEFENSE**

Plaintiff has failed to mitigate Plaintiff's damages, if any.

**TWELFTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff assumed a risk and/or was contributorily negligent.

**THIRTEENTH DEFENSE**

DuPont violated no duty or obligations which it owed to Plaintiff.

**FOURTEENTH DEFENSE**

There is no proximate cause between Plaintiff's alleged damages and injuries and any act or omission by DuPont.

**FIFTEENTH DEFENSE**

DuPont neither knew, nor should have known, that any of the substances to which Plaintiff was allegedly exposed were hazardous or constituted a reasonable or foreseeable risk of physical harm by virtue of the prevailing state of the medical, scientific and/or industrial knowledge available to DuPont at all times relevant to the claims or causes of action asserted by Plaintiff.

**SIXTEENTH DEFENSE**

Plaintiff has failed to plead facts sufficient to state a valid claim for abnormally dangerous or ultrahazardous activity, or to establish that DuPont knew that the activities about which Plaintiff complains were allegedly abnormally dangerous or ultrahazardous at the time they occurred. Absent such allegations, Plaintiff has no cause of action in strict liability for abnormally dangerous or ultrahazardous activity.

**SEVENTEENTH DEFENSE**

Plaintiff has failed to plead facts sufficient to state a valid claim for trespass and/or battery.

**EIGHTEENTH DEFENSE**

Plaintiff has failed to identify any statutory violation that would support or provide a valid basis for a claim of negligence *per se* and/or *prima facie* negligence.

**NINETEENTH DEFENSE**

DuPont did not engage in any conduct which would warrant or form a valid basis for an award of punitive damages.

**TWENTIETH DEFENSE**

DuPont has complied with all applicable statutes and regulations set forth by local, state and/or federal government(s) with regard to the conduct alleged in the Complaint, and, therefore, to the extent that consideration is given to Plaintiff's claims, punitive damages are unwarranted in law and fact.

**TWENTY-FIRST DEFENSE**

To allow Plaintiff to recover exemplary or punitive damages from DuPont as alleged and sought in the Complaint would deprive DuPont of its constitutional rights to substantive and procedural due process of law and to equal protection under the law, which rights are guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by the Constitution of Ohio and/or West Virginia.

**TWENTY-SECOND DEFENSE**

To allow Plaintiff to recover from DuPont exemplary or punitive damages would deprive DuPont of its constitutional rights under the Eighth Amendment to the United States Constitution and under the Constitution of Ohio and/or West Virginia, which prohibit the imposition of an excessive fine.

**TWENTY-THIRD DEFENSE**

Punitive damages are not available because all conduct and activities of DuPont related to matters alleged in the Complaint conformed to industry standards based upon the state of medical, scientific, and/or industrial knowledge which existed at the time or times that Plaintiff is alleged to have been exposed.

**TWENTY-FOURTH DEFENSE**

Punitive damages are not available because DuPont neither knew nor should have known that the substances to which Plaintiff was allegedly exposed were hazardous or constituted a reasonable or foreseeable risk of physical harm, and DuPont therefore lacked notice that its conduct was unlawful or subject to punishment and an award of punitive damages would violate DuPont's constitutional right to due process.

**TWENTY-FIFTH DEFENSE**

Plaintiff's claims violate the due process provision of the United States Constitution and the correlative provisions of the Constitution of Ohio and/or West Virginia to the extent that they seek to deprive DuPont of procedural and substantive safeguards, including traditional defenses to liability and punitive damages.

**TWENTY-SIXTH DEFENSE**

Plaintiff lacks standing to assert, in whole or in part, the claims and the demands for relief in the Complaint.

**TWENTY-SEVENTH DEFENSE**

Plaintiff's claims are barred by accord and satisfaction and/or release.

**TWENTY-EIGHTH DEFENSE**

For the time period relevant to the allegations in the Complaint, C-8, as that term is defined in the Complaint (including ammonium perfluorooctanoate and PFOA), was not subject to regulation by any federal, state, regional, or local government, agency, or body.

**TWENTY-NINTH DEFENSE**

Plaintiff, to the extent that he or she is a class member, is barred from obtaining the relief, in whole or in part, sought in the Complaint to the extent the Complaint

includes claims or seeks relief which were not originally pled in the class action in *Jack W. Leach, et al. v. E. I. du Pont de Nemours and Company*, Civ. No. 01-C-608 (Cir. Ct. Wood Co. W. Va.) as certified.

**THIRTIETH DEFENSE**

Plaintiff has failed to plead fraud with particularity, and has further failed to state a claim for fraud upon which relief can be granted.

**THIRTY-FIRST DEFENSE**

DuPont is entitled to all of the procedural, substantive and other protections, caps and limitations provided by the state statutes and other state and federal law regarding Plaintiff's claims for compensatory and punitive damages.

**THIRTY-SECOND DEFENSE**

Plaintiff has failed to plead a claim for defective product and/or failure to warn because DuPont is not the manufacturer of an allegedly defective product as defined by statute.

**THIRTY-THIRD DEFENSE**

Plaintiff has failed to adequately plead and/or allege that DuPont made any representation(s) with regard to its goods and/or services that would give rise to a claim for unfair and deceptive trade practices.

**THIRTY-FOURTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege the existence of a conspiracy.

**THIRTY-FIFTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege the requisite commercial relationship with DuPont that could give rise to a claim based upon an allegedly

defective product, an alleged failure to warn, and/or an unfair and deceptive trade practice.

**THIRTY-SIXTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege claims for defective product, failure to warn, and/or unfair and deceptive trade practices.

**THIRTY-SEVENTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege that DuPont owed and/or breached a duty to Plaintiff(s).

**THIRTY-EIGHTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege that DuPont made any representation(s) to Plaintiff(s) that would form the basis of a claim for negligent misrepresentation.

**THIRTY-NINTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege any interference by DuPont with a right of exclusive possession or control of property that would give rise to a claim for trespass.

**FORTIETH DEFENSE**

Plaintiff has failed to adequately plead and/or allege that DuPont acted with the requisite state of mind to warrant an award of punitive damages.

**FORTY-FIRST DEFENSE**

Plaintiff has failed to adequately plead and/or allege that Plaintiff(s) suffered a fear of real physical harm that could give rise to a claim for intentional and/or negligent infliction of emotional distress.

**FORTY-SECOND DEFENSE**

Plaintiff has failed to adequately plead and/or allege that DuPont engaged in conduct and/or acted with the requisite state of mind to form the basis of a claim for intentional infliction of emotional distress.

**FORTY-THIRD DEFENSE**

Plaintiff has failed to adequately plead and/or allege that he/she suffered the requisite level of mental anguish to support a claim for intentional or negligent infliction of emotional distress.

**FORTY-FOURTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege facts that would form the basis of a claim for loss of companionship and/or consortium.

**FORTY-FIFTH DEFENSE**

Plaintiff has failed to adequately plead and/or allege any interference by DuPont with an interest in public or private use of land that would give rise to a claim for public or private nuisance.

DuPont expressly reserves the right to amend its Answer and/or to assert and pursue additional affirmative and other defenses and/or counterclaims should discovery or future developments reveal the basis for any such amendments, claims, or defenses.

WHEREFORE, DuPont respectfully requests that the Complaint be dismissed with prejudice in its entirety, that Plaintiffs recover nothing from DuPont, that DuPont be awarded its litigation costs and expenses, and that the Court order such other relief in favor of DuPont as it deems just and proper.

**JURY DEMAND**

DuPont demands a trial by a jury on all issues in plaintiff's complaint so triable.

Respectfully submitted,

/s Damond R. Mace

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Attorneys for defendant E. I. du Pont de  
Nemours and Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Abbreviated Answer was electronically filed with this Court's CM/ECF system on this [ ] day of [ ], 2013, and was thus served automatically upon all counsel of record for this matter.

*s/ Damond R. Mace*  
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Damond R. Mace (0017102)