

**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. DEEVERS**

**This document relates to: *David Freeman v. E. I. du Pont de Nemours and  
Company, Case No. 2:13-cv-1103***

**CASE MANAGEMENT ORDER NO 13-A**

**FINAL PRETRIAL ORDER**

The Court held a final pretrial conference in this case on May 6, 2016, at 9:00 a.m., pursuant to Fed. R. Civ. P. 16, and a second final pretrial is scheduled for May 17 at 9:00 a.m.

**I. APPEARANCES**

For Plaintiff: Robert Bilott, Gary J. Douglas, Michael Papantonio, David Butler, Timothy O'Brien, Rebecca Newman, Chris Paulos, Ashley Brittain Landers, Jeffrey Gaddy, Wesley Bowden

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

**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: approximately 4 weeks

#### IV. AGREED STATEMENT AND LISTS

##### A. General Nature of the Claims of the Parties

1. Plaintiff's Claims: David Freeman is pursuing personal injury claims against DuPont for compensatory and punitive damages alleging that his testicular cancer was caused by the consumption of his drinking water, which was contaminated with C-8 that was discharged from DuPont's Washington Works Plant. Plaintiff's claims are based in negligence, including cancer phobia/fear of cancer.

2. Defendants' Claims: DuPont claims that it did not have any legal duty under the facts present here, and did not breach any duty of care owed to Plaintiff. At all relevant times, no employee of DuPont thought that his or her actions were likely to cause any harm to Mr. Freeman, or any similarly situated person in the community. In addition, DuPont's conduct was reasonable based on what it knew or should have known at all relevant times. DuPont denies any liability to Mr. Freeman.

With respect to Plaintiff's claimed injury, Mr. Freeman's testis cancer was not proximately caused by any conduct by any DuPont employee, and would have occurred even without any exposure to C8 from the Washington Works' plant. DuPont also asserts that Plaintiff's cancer was successfully removed more than 16 years ago, and that his compensable damages, if any, 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 C-8 from the Washington Works Plant, including into the Ohio River as well as into the air.
3. David Freeman's consumption of drinking water for at least one year containing 0.05 ppb or more of C-8 is sufficient to cause testicular cancer.
4. David Freeman consumed drinking water from the Little Hocking Water Association, in Ohio.
5. David Freeman was diagnosed with testicular cancer and had surgery to remove a testicle.
6. DuPont remains wholly and solely responsible for any verdict and/or judgment that is rendered in this case in favor of David Freeman.

*DuPont's Response:* Defendant does not contest the facts in items nos. 1, 2, 4, or 5 above. Defendant contests Item 3, and preserves for appeal all of its prior arguments and objections on this issue. 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 David Freeman consumed for at least one year, water containing at least 0.05 ppb C-8.
- 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 C-8 from the Washington Works Plant.
- 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 David Freeman, including cancer phobia/fear of cancer.
- Whether David Freeman's testicular cancer and related injuries were more likely than not the result of his exposure to C-8.
- What amount of money will compensate David Freeman for his injuries and damages, taking into consideration any physical pain and suffering and mental anguish, including cancer phobia/fear of cancer, that the greater weight of the evidence shows was more likely than not experienced by David Freeman.
- What amount of money will compensate David Freeman for any permanent disability or loss of enjoyment of life that the greater weight of the evidence shows to have been suffered by him as a result of his 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, prior to Mr. Freeman's claimed injury in 2000, DuPont knew or should have known that harm to humans was likely at community levels of exposure.



- Whether DuPont used the care that a reasonable corporation would have used under the relevant circumstances and facts at the relevant time.
- Whether Plaintiff's testis cancer was specifically and proximately caused by the C8 he consumed in drinking water from the Little Hocking Water District, and would not have occurred but for his exposure to C8 from the Washington Works plant.
- 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:

- Other legal issues raised in the extensive prior motion practice in the MDL and prior individual cases, and those noted in Section VII below.

**D. Witnesses**

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

- David Freeman (Plaintiff)

Plaintiff may call the following live, fact witnesses:

- Veronica Freeman: As Plaintiff's spouse, she may testify as to Mr. Freeman's damages, including his pain and suffering, his consumption of drinking water, and any and all topics discussed during her deposition.
- Jacob Freeman: As Plaintiff's son, he may testify as to Mr. Freeman's damages, including his pain and suffering, his consumption of drinking water, and any and all topics discussed during his deposition.

- Kelli A. Cawley, M.D.: As Plaintiff's treating physician, she may provide fact testimony pertaining to Plaintiff's treatment, and any and all topics discussed during her deposition.
- Michael Dourson, Ph.D.: He may testify to his role as part of TERA and/or the CATT team, and any and all topics covered during his trial testimony in *Bartlett v. E. I. du Pont de Nemours & Co.*, 13-cv-170 ("*Bartlett*").
- Robert Griffin: He may testify as to the years and dates of installation of Little Hocking Water to Mr. Freeman's home, in Cutler, Ohio, and any and all topics discussing during his depositions.
- 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. Defendant currently expects that it will call the following fact witnesses 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.
- Andrew Hartten - Mr. Hartten was a DuPont employee 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. He may also testify regarding filtration of C8 from drinking water 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. 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 trial testimony, 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 currently expects that it may call, if the need arises, the following witnesses at trial:

- 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.
- Kelli A. Cawley, M.D. -Dr. Cawley is one of Mr. Freeman's treating physicians. If called, she is expected to testify regarding



Mr. Freeman's testicular cancer diagnosis and treatments as well as post-surgery medical surveillance. Dr. Cawley has been deposed, and may testify live or by deposition.

- Veronica Freeman - Mrs. Freeman is the wife of the plaintiff. If called, she is expected to testify about plaintiff's testicular cancer diagnosis, treatment, surveillance, and any other topic discussed during her deposition. Mrs. Freeman may be called live or by deposition.
- Jacob Freeman: Mr. Jacob Freeman is the son of the plaintiff. He may testify about plaintiff's testicular cancer diagnosis, treatment, surveillance, and any other topic discussed during his deposition. Mr. Freeman 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.
- Richard Clark, M.D. - Dr. Clark is one of Mr. Freeman's treating physicians. If called, he is expected to testify regarding Mr. Freeman's care and treatment, and related matters.
- 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.
- 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.

- 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.
- John Flaherty - Mr. Flaherty is fact witness and an expert witness. He 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.
- Kathleen Forte - Ms. Forte was 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.
- Dr. Bruce Karrh - Dr. Karrh is the former medical director of DuPont. If called his testimony is primarily expected to concern DuPont's evaluation of potential health risks from exposure to C8 and related matters. Dr. Karrh has been deposed and, if called, will testify 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.

- Kim Kreckmann – Mr. Kreckman has been an employee of DuPont. If called, Mr. Kreckmann is expected to testify concerning DuPont's epidemiology program, DuPont's historical medical surveillance of workers, DuPont's systems for tracking employee-specific data, and related matters.
- Laura Korte – Ms. Korte was an operations manager for C8 at DuPont. If called, Ms. Korte is expected to testify primarily about her involvement at the plant, the voluntary stewardship program and DuPont's communications about C8 with various regulators, including WV DEP and US EPA, and related matters. She may also testify regarding measures taken by DuPont to phase out C8 and address environmental issues arising from its use, 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 at the plant 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.
- 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.
- Barry Lifson M.D. - Dr. Lifson is one of Mr. Freeman's treating physicians. If called, he is expected to testify regarding Mr. Freeman's care and treatment, 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.
- 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 was 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.
- DeeAnn Staats, Ph.D. - Dr. Staats is a former employee of the West Virginia Department of Environmental Protection. If called, she is primarily expected to testify concerning her work leading the C8 Assessment of Toxicity Team (CATT), communications with CATT members, communications with DuPont, as well as her interactions with other governmental regulators and the public as it



relates to C8. Dr. Staats has been deposed and, if called, will testify 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.

- 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.
- A representative of ACGIH, if needed for rebuttal after Plaintiff's case in chief.
- Any other witness who may be needed to establish authentication, foundation or admissibility of any exhibit.
- Any witness needed for impeachment, rebuttal or sur-rebuttal.

*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. Cawley, Kelli, M.D. (treating physician only)
  4. MacIntosh, David, Sc.D., C.I.H.
  5. Petty, Stephen, P.E., C.I.H., C.S.P.
  6. Redlich, Carrie, M.D., M.P.H.
  7. Siegel, Michael, M.D., M.P.H.
  8. Smith, Jim, Ph.D., C.P.C.

Plaintiff may call at trial:

1. Levy, Barry, M.D., M.P.H.
2. Johnson, Robert, Ph.D. (punitive phase only)

2. Defendant currently intends to call at trial:

1. Robert W. Rickard, Ph.D.
2. Tony Luongo, M.D. or Mark Schoenberg, M.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
6. Shane A. Snyder, Ph.D.
7. John M. Flaherty

Plaintiff's General Objection to certain of Defendant's expert witnesses are also addressed in Plaintiff's objections to certain of Defendant's Deposition Designations. More specifically, for John M. Graham, M.D., Greg P. Sykes, Ph.D., and John M. Flaherty, whom defendant also submitted their deposition designations, pursuant to Fed.R.Civ.P. 32(a)(4), Plaintiff objects to the entirety and/or any portion of this deposition being read to or played for the jury. Because this witness is an expert witness retained by Defendant and would come to trial if asked by Defendant. By not making arrangements to get the retained

expert to come to trial, Defendant has procured the witness's absence from trial and, therefore, DuPont has failed to show that the witness is unavailable for trial. Fed. R. Civ. P. 32(a)(4); *see Poly v. Trans-Colorado Airlines, Inc.*, 941 F.2d 1404 (10<sup>th</sup> Cir. 1991

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)(Adopted in the *Freeman* matter per ECF No. 4329-4)
2. Bahnson, Robert, M.D., F.A.C.S. (ECF No. 4329-1, Exhibit A)
3. Johnson, Robert, Ph.D. (punitive phase only) (ECF No. 3441-4, Ex. B) (Adopted in the *Freeman* matter per ECF No. 4329-4)
4. Levy, Barry, M.D., M.P.H.: (ECF 3441-10, Attachment A) (Adopted in the *Freeman* matter per ECF No. 4329-4)
5. MacIntosh, David, Sc.D., C.I.H. (ECF No. 4329-2, Attachment 1)
6. Petty, Stephen, P.E., C.I.H., C.S.P. (ECF No. 3441-3, Appendix B) (Adopted in the *Freeman* matter per ECF No. 4329-4)
7. Redlich, Carrie, M.D., M.P.H (ECF No. 4329-3. Attachment 1)
8. Siegel, Michael, M.D., M.P.H. (ECF No. 3441-8, Appendix B) (Adopted in the *Freeman* matter per ECF No. 4329-4)
- Smith, James, Ph.D., C.P.C. (ECF No. 3441-9, Section VIII) (Adopted in the *Freeman* matter per ECF No. 4329-4)

***For Defendant Expert Witnesses:***

1. Tony Luongo, M.D. (ECF No. 4310, Ex. A)
2. Mark Schoenberg, M.D. (ECF No. 4310, Ex. C)
3. John M. Graham, M.D. (ECF No. 2807, Ex. B)
4. Robert W. Rickard, Ph.D. (ECF No. 2807, Ex. D)
5. Shane A. Snyder Ph.D.(ECF No. 2807, Ex. E)
6. Greg P. Sykes, Ph.D. (ECF No. 2807, Ex. F)
7. Stephen T. Washburn (ECF No. 2807, Ex. H)
8. Thomas C. Voltaggio (ECF No. 2807, Ex. G)
9. Douglas L. Weed, M.D., Ph.D (ECF No. 2807, Ex. I)
10. John Flaherty (ECF No. 4528, Ex. A)

**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. The parties accept and agree to be bound by the Court's prior rulings in *Bartlett* with respect to any previously-ruled-upon deposition designations, except to the extent either party seeks limited reconsideration of any specific rulings for good cause shown or to the extent subsequent rulings by the Court alter or affect those designations. For any additional deposition designation disputes not previously ruled upon by the Court in the *Bartlett* matter, such disputes will be heard by the Court at the hearing currently scheduled for May 17, 2016 or such other time as the Court decides.

**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. Griffin, Robert
10. Karrh, Bruce
11. Little, John
12. Reilly, Bernard
13. Skaggs, Craig
14. Staats, DeeAnn
15. Stewart, Walter
16. Webb, Clifton

**BY DEFENDANT:**

1. Dr. Bruce Karrh
2. Dr. Kelli Cawley
3. Mrs. Veronica Freeman
4. Mr. Jacob Freeman
5. Dr. DeeAnn Staats
6. John M. Flaherty
7. Dr. Greg P. Sykes
8. Dr. John M. Graham

**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. Parties' Joint Statement Regarding Exhibits**

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 have been provided to DuPont's counsel pursuant to the terms of Case Management Order ("CMO") No. 13. Plaintiff served an amended trial exhibit list on May 9, 2016. DuPont served an amended trial exhibit list on May 10, 2016.

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

Pursuant to CMO 13, DuPont served its objections to Plaintiff's Trial Exhibit List on April 27, 2016. Pursuant to the schedule set-forth in CMO 13, Plaintiff served his objections to DuPont's Exhibit List on May 3, 2016. The parties agree that these objections are hereby preserved as of the date that such objections were served.

Plaintiff and DuPont will, on or before 8:00 pm on May 10, 2016, each identify approximately 300 documents that they currently intend to offer into evidence. The opposing side will have until 8:00 pm on May 12, 2016 (48 hours) to object or not object to the listed exhibits. Of note, it is anticipated that from each side's 300 documents, many of them were the subject of previous rulings by the Court in the Bartlett case. Thereafter, to the extent either side maintains objections to documents on the other party's list of approximately 300 exhibits, the

Parties will jointly ask the Court to hear the Parties' remaining objections at its earliest convenience, which may include the next pre-trial conference currently set for May 17, 2016.

Notwithstanding the above, both parties will still be permitted to offer additional documents into evidence. These documents can be offered during the course of the trial and either be admitted without objection or by Court rulings as needed. Moreover, to the extent the Court already will have determined the admissibility of the approximately 600 documents mentioned, above, the parties should be guided by these prior rulings, as well as the prior rulings from the Bartlett trial and pre-trial rulings (as well as the motion in limine rulings in this case). Both parties will have the right to preserve all objections that were properly and timely lodged pursuant to CMO 13 for any appeal. Notwithstanding this, Plaintiff hereby represents that he will make a good faith effort to offer no more than 200 additional documents during the course of the trial.

No later than noon on May 30, 2016, each side will identify for the other side any exhibits, that they intend to use in opening statements, so disputes concerning these documents, can be addressed prior to opening statements on June 1, 2016. By 6:00 PM on May 31, 2016, each side shall disclose to the other side any graphics or demonstrative aids to be used in opening statements so any related disputes can be raised prior to opening statements on June 1, 2016.

## **2. 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**

The parties have agreed to the above protocol for the disclosure of the initial 550 exhibits, and to the protocol for the disclosure of any exhibits to be used in opening statements. No other stipulations have been made between the parties pursuant to the Federal Rules.

The parties are still discussing whether additional stipulations can be agreed upon.

## **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, as well as its merger with Dow Chemical, all of which are addressed and preserved 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.

Defendant contends that case-specific discovery in the Freeman case is closed. DuPont also disagrees with Plaintiff's inaccurate characterizations made above. There are no inconsistent statements or positions with respect to the spinoff of Chemours or the merger between Dow and DuPont, and DuPont has timely responded in accordance with the guidance given by the Court. DuPont incorporates all of its relevant briefing and oral arguments on these issues.

## **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-specify instruction. To this end, counsel shall adhere to the following procedures:

1. The parties served their proposed jury instructions on each other on **May 11, 2016**.
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 May 16, 2016.

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:


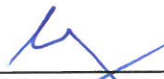
1. Remaining issues regarding Motions *in Limine* following the hearing on May 6, 2016
2. The substance of limiting instructions discussed during the Motions *in Limine* hearing on May 6, 2016 and addressed in PTO [ ].
3. Issues regarding Trial Exhibits.
4. Issues regarding Deposition Designations.

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

1. Outstanding Third Motion to Compel related to *Chemours* Spinoff and the merger with Dow Chemical [ECF Nos. 4106, 4127, 4137, 4195, 4204, 4289, 4302, 4516, 4522]
2. Plaintiff's *Daubert* Motions [ECF No. 4322, 4323, 4336, 4342, 4343]
3. DuPont's *Daubert* Motions [ECF No. 4315, 4319, 4321, 4331, 4332, 4333, 4339, 4340, 4346]

4. DuPont's Preservation Motion to Apply Ohio Tort Reform Act [ECF Nos. 4401, 4526]. DuPont's reply memoranda is due on May 26, 2016.

5. DuPont's Motion for Reconsideration of the Procedure Used in Bartlett, and To Bifurcate the Compensatory Liability and Damages Phase of Trial (Phase I) From the Punitive Liability and Damages Phase (Phase II) and to Exclude Certain Evidence from Phase I [ECF No. 4400, 4525]. DuPont's reply memoranda is due on May 26, 2016.

  
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Trial Counsel for Plaintiff  
\_\_\_\_\_  
Trial Counsel for Defendant  
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EDMUND A. SARGUS, JR.  
Chief United States District Judge