

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE SULFURIC ACID)
ANTITRUST LITIGATION)
)

MDL Docket No. 1536
Case No. 03 C 4576

This Document Relates To:)
)
ALL RELATED ACTIONS)
)

Honorable Judge David H. Coar
Magistrate Judge Jeffrey Cole

**ORDER FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT
WITH E. I. DU PONT DE NEMOURS AND COMPANY,
FOR AUTHORIZATION TO DISSEMINATE FORMS OF NOTICE AND FOR
APPOINTMENT OF COUNSEL FOR THE SETTLEMENT CLASS**

It is hereby ORDERED AND DECREED as follows:

1. The Motion for Preliminary Approval of Proposed Settlement between Class Plaintiffs and Defendant E. I. du Pont de Nemours and Company ("DuPont"), for Authorization to Disseminate Forms of Notice and for Appointment of Counsel for the Settlement Class is hereby GRANTED.
2. The Court finds that the proposed settlement with DuPont, as set forth in the Settlement Agreement with Class Plaintiffs, and subject to final determination following a hearing after notice to potential class members, is sufficiently fair, reasonable and adequate to authorize dissemination of notice of the proposed settlement to the Settlement Class (defined in paragraph 3 of this Order).
3. For purposes of disseminating notice of the proposed settlement with DuPont, and subject to final confirmation at the hearing on final approval of the proposed settlement contemplated by paragraph 19 of this Order, the Court preliminarily certifies the following settlement class (the "Settlement Class"), pursuant to Fed. R. Civ. P. 23(a) and (b)(3):

All persons (excluding governmental entities and Defendants and their parents, predecessors, subsidiaries, affiliates, and their co-conspirators) who purchased Sulfuric Acid in the United States directly from any of the Defendants or any predecessor, successor subsidiary or affiliate of each, at any time during the period from January 1, 1988 until January 16, 2003.

“Sulfuric Acid,” as defined in the Settlement Agreement, is non-fuming sulfuric acid (Chemical Formula: H₂SO₄) which is, for illustration (although not exclusively), commonly sold at strengths of 93% and 98%. For purposes of the Agreement, Sulfuric Acid does not include spent regenerated sulfuric acid.

4. For purposes of disseminating notice of the proposed settlement with DuPont, and subject to final confirmation at the hearing on final approval of the proposed settlement contemplated by paragraph 19 of this Order, the Court preliminarily finds and concludes that:

- a. The Settlement Class is so numerous that joinder of all members is impracticable, satisfying the requirement of Rule 23(a)(1);
- b. There are questions of law or fact common to the Settlement Class, satisfying the requirements of Rule 23(a)(2);
- c. The claims of the representative plaintiffs are typical of the claims of the Settlement Class, satisfying the requirement of Rule 23(a)(3);
- d. The representative plaintiffs will fairly and adequately protect the interests of the Settlement Class, satisfying the requirements of Rule 23(a)(4);
- e. Questions of law or fact common to the members of the Settlement Class predominate over questions affecting only individual members, and a class action is superior to other methods available for the fair and efficient adjudication of the controversy, satisfying the requirements of Rule 23(b)(3); and
- f. The action is manageable as a class action.

5. Pursuant to Fed.R.Civ.P. 23(g), the Court confirms the designation of the following attorneys as class counsel: Steven A. Asher, currently of Weinstein Kitchenoff & Asher LLC (formerly of Fox Rothschild LLP); Mary Jane Edelstein Fait of Wolf Haldenstein Adler Freeman & Herz, LLC; Joseph C. Kohn of Kohn Swift & Graf, P.C.; and Steven O. Sidener of Gold Bennett Cera & Sidener ("Class Counsel"). The Court finds and concludes, pursuant to Fed. R. Civ. P. 23(g)(1)(B), that such counsel will fairly and adequately represent the interests of the Settlement Class based upon the work counsel has done in identifying or investigating the claims in the action and counsel's skill and diligence in arriving at the settlements with the Settling Defendants; counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this action; counsel's knowledge of the applicable law; and the resources counsel have committed and will commit to representing the Settlement Class.

6. The Court approves the establishment of the escrow account under the Settlement Agreement as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Class Counsel are, in accordance with the Settlement Agreement, authorized to expend funds from the QSF for payment of taxes and related expenses.

7. The litigation against DuPont is stayed except as required by the Settlement Agreements in order to implement the same.

NOTICE

8. The Notice and Summary Notice, attached hereto as Exhibits 1 and 2, are approved and may be disseminated in substantially the same form. The Court finds that the mailing and publication of the Notices in the manner set forth in Paragraphs 10, 11 and 12

below, constitute the best notice practicable under the circumstances as well as valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.

9. On or before **September 4, 2006**, all Defendants shall provide to Class Counsel, in electronic, computer-readable format if available, the names and last known addresses of all persons and entities who purchased Sulfuric Acid (as defined above) directly from any defendant or any subsidiary, affiliate or joint venture of any defendant, during the Class Period.

10. The Notice shall be: (a) mailed by first class mail, postage prepaid, on or about **September 19, 2006**, to all members of the Settlement Class identified by Defendants pursuant to paragraph 9 hereof; and (b) provided to all persons who request it in response to the published Summary Notice provided for in Paragraph 11 herein.

11. Class Counsel are hereby directed to cause a Summary Notice, in the form attached hereto as Exhibit 2, to be published, on or about **September 29, 2006**, on one occasion in the National Edition of The Wall Street Journal. By this same date, class counsel are authorized to establish a website for purposes of posting electronically for the benefit of class members pertinent litigation documents, including the operating complaint, the settlement agreement with DuPont, and the class counsel petition for partial reimbursement of costs and expenses.

12. No later than **December 18, 2006**, Class Counsel shall cause to be filed with the Clerk of this Court, and served upon counsel for DuPont, affidavits or declarations of the person under whose general direction the mailing of the Notice and Proof of Claim form and the publication of Summary Notice were made, showing that mailing and publication were made in accordance with this Order. The Claims Administrator, who shall be retained by Class Counsel,

shall maintain accurate records of the individual customers to which the Claims Administrator sent a Notice by First Class Mail, and accurate records of any mailed Notices that were returned to the Claims Administrator as undeliverable.

REIMBURSEMENT OF COSTS AND EXPENSES

13. The Court approves the use of up to \$75,000 from the Settlement Fund for reasonable expenses associated with providing notice of the settlement to the proposed Class and expenses associated with administering the Settlement Fund.

14. No later than **September 4, 2006**, Class Counsel may file a petition for partial reimbursement of out of pocket costs and expenses paid and incurred in prosecuting this litigation to date, in an amount not to exceed \$1.67 million, which petition shall be addressed at the Hearing.

EXCLUSION FROM CLASS AND OBJECTIONS TO SETTLEMENT

15. Any requests for exclusion from the Settlement Class must be filed with the Court and served upon Class Counsel and postmarked no later than **November 3, 2006**.

16. Any objections to the proposed settlement of the litigation between DuPont and Class Plaintiffs must be filed with the Court and served on Class Counsel and counsel for DuPont no later than **November 3, 2006**.

OPTION TO TERMINATE

17. Within ten (10) days of the postmark deadline for exclusion from the Settlement Class, no later than **November 13, 2006**, Class Counsel shall provide to counsel for DuPont a list of those Class Members who have timely opted-out or excluded themselves from the Class.

18. Within twenty (20) days of Class Counsel's submission of the list of those Class Members who have timely opted-out or excluded themselves from the Class, no later than

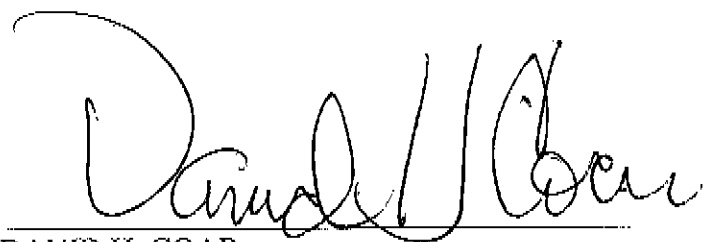
December 4, 2006, DuPont may, if the requirements of Paragraph 38 of the Settlement Agreement are satisfied, elect to terminate the Settlement Agreement by written notice of the election to Class Counsel.

FINAL APPROVAL

19. The Court will hold a hearing (the "Hearing") on **December 20, 2006, at 10:00 a.m.**, in Courtroom 1419, at the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 60604 to determine the fairness, reasonableness, and adequacy of the proposed settlement with DuPont, and to determine whether the proposed settlement is fair, reasonable and adequate and should be approved by the Court, and to determine whether to grant class counsels' petition for partial reimbursement of costs and expenses. Any Class member who follows the procedure set forth in the Notices may appear and be heard at this hearing. The Hearing may be continued without further notice to the Settlement Class.

20. All papers in support of final approval of the settlement are to be filed at least ten (10) days prior to the date of the Hearing on final approval of the settlement.

This **2nd** day of **August**, 2006

A handwritten signature in black ink, appearing to read "David H. Coar", written over a horizontal line.

DAVID H. COAR
UNITED STATES DISTRICT COURT JUDGE