IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT F. COCKERILL, OLIVER MAJOR, and DARRELL D. BENSON, SR., individually and as representatives on behalf of a class of similarly situated persons,

Plaintiffs,

vs.

CORTEVA, INC.; DUPONT SPECIALTY PRODUCTS USA, LLC; DUPONT DE NEMOURS, INC.; E.I. DU PONT DE NEMOURS AND COMPANY; THE PENSION AND RETIREMENT PLAN; THE BENEFIT PLANS ADMINISTRATIVE COMMITTEE,

Defendants.

Case No. 2:21-cv-03966-MMB

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' PROPOSED JUDGMENT AND MEMORANDUM OF LAW

Plaintiffs Robert F. Cockerill, Oliver Major, and Darrell D. Benson, Sr., and all others similarly situated ("Plaintiffs"), hereby reply in support of Plaintiffs' [Proposed] Judgment in Favor of Plaintiffs and Order for Relief ("Proposed Final Judgment and Order"), ECF No. 387, as well as Plaintiffs' Memorandum in Support of Proposed Final Judgment and Order ("Plaintiffs' Memorandum"), ECF No. 388, as follows.

INTRODUCTION

Plaintiffs attached to the Proposed Final Judgment and Order (i) a proposed notice of judgment for all Class members (ECF No. 387-1), (ii) proposed reformation language with respect to Early Retirement benefits (ECF No. 387-3), and (iii) proposed individualized notices of the right to elect claims and election forms for members of both Classes (ECF Nos. 387-1, 387-2). Plaintiffs' Memorandum primarily addressed several issues with respect to which individuals are and remain members of one of the two certified Classes.

Pursuant to this Court's Order of May 19, 2025 (ECF No. 397), Plaintiffs hereby respond to certain arguments raised by Defendants in their Response to Plaintiffs' Proposed Judgment and Memorandum of Law (ECF No. 396) and their Objections to Plaintiffs' Proposed Class Notices (ECF No. 395).[1]

ARGUMENT

I. Individuals Whose Early Retirement Benefits Became Equal to their Optional Retirement Benefit During the Pendency of the Litigation Are Encompassed Within the Optional Retirement Class Definition.

This Court has defined the Optional Retirement Class as:

> All Plan participants who were over age 50, with at least 15 years of service under the Plan as of May 31, 2019, and who were employed by Historical DuPont or any other participating employer of Title I of the Plan, and who continued to be employed, post spin-off, by New DuPont or one of its subsidiaries that did not participate in Title I of the Plan, and the beneficiaries or estates of such participants. The class does not include anyone who received or was eligible for unreduced Early Retirement Benefits at the time of the spin-off. The class does not include anyone whose Early Retirement Benefits, at spin-off or through present, would be equal to, or greater than their Optional Retirement benefits.

ECF No. 137. Defendants argue that this definition excludes anyone, such as Mr. Benson, whose Early Retirement benefits now equal (or exceed) their Optional Retirement benefits because of the passage of time during the pendency of the suit. As Plaintiffs argued in their Memorandum in Support of Proposed Final Judgment and Order, ECF No. 388, at 5, this is not the case. Although

[1] As they did in their Memorandum in Support of Proposed Final Judgment and Order, Plaintiffs continue to preserve and incorporate by refence all previous arguments with respect to remedies (*see* ECF Nos. 335, 344, 363, 388). Moreover, Plaintiffs disagree with Defendants' contention that the Proposed Notice of Final Judgment would be confusing or otherwise ill-advised, *see* ECF No. 395, or that the Administrative Committee as Plan Administrator should control the timing and content of the individualized notices and election forms. *Id.* Nor do Plaintiffs agree with Defendants that "Numerous Aspects of the Proposed Judgment are Administratively Impractical or Otherwise Improper." ECF No. 396, at 4. However, given this Court's Order with respect to what to address in this reply, Plaintiffs do not further brief these issues here.

Plaintiffs had previously requested clarification from this Court on this issue, ECF No. 337, this clarification is no longer necessary. Now that the Court has ruled that Optional Retirement Class members may retroactively seek benefits beginning at the time of the spin-off, the total amount of Optional Retirement benefits for those Class members will *always* be greater than the Early Retirement benefits.

Plaintiffs note that Defendants have not provided contact information for any individual whose Early Retirement benefits equaled or exceeded their Optional Retirement benefits post spin-off, but prior to May 10, 2024, when Defendants originally supplied mailing lists to Plaintiffs' class notice vendor. Contact information for these individuals needs to be provided to Plaintiffs' counsel so that the appropriate notices can be sent to these individuals following entry of the Final Judgment and Order in this case.

II. Individuals Who Signed Releases Are Encompassed Within the Optional Retirement Class Definition.

Nothing in this Court's definition of the Optional Retirement Class either expressly or implicitly excludes individuals who have signed releases. Indeed, the Optional Retirement Class definition does not mention releases, and the releases themselves carve out vested and accrued benefits. *See* ECF No. 318, at 139 ¶¶ 531, 532 (citing D-26, at 1, 2, ¶¶ 4(a), 4 (b)). Furthermore, as Defendants recognize, this Court has already held that the releases do not "bar entry of judgment or recovery in favor of any individual who signed the release," ECF No. 396, at 2 (citing ECF No. 318). Defendants have asserted no reason for this Court to revisit that holding.

III. Rehired Individuals Are Encompassed Within the Class Definitions.

Similarly, nothing in the Optional Retirement Class definition adopted by this Court addresses or excludes individuals who were rehired after January 1, 2007. So long as they had 15 years of qualifying employment and were at least 50 as of the spin-off, they are encompassed

within the definition. Likewise, nothing in the definition of the Early Retirement Class excludes anyone with 15 years of service who was rehired after January 1, 2007, and attained (or attains) the age of 50 after the spin-off, while employed by New DuPont.

Defendants contend that the Court has somehow ruled on this issue. Not so. Although the Court denied Plaintiffs' Motion to Compel production of data regarding individuals in this category (ECF No. 351), the Court's denial contained no findings or discussion of the issue. ECF No. 365. And Defendants' reliance on a 2018 Summary Plan Description (SPD) as definitively establishing that such individuals are excluded under the terms of the Plan is too little, too late. An SPD is not itself a Plan document, *see CIGNA Corp. v. Amara*, 563 U.S. 421, 437-38 (2011) and "the SPD cannot create terms that are not also authorized by, or reflected in, governing plan documents." *Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1131 (10th Cir. 2011). *See also Helton v. AT&T*, 709 F.3d 343, 358 (4th Cir. 2013) (refusing to enforce terms of SPD to preclude an award of retroactive benefits where the Plan contained no such limitation).

As discussed in Plaintiffs' Memorandum, the terms of the Plan itself and the Continuity of Service rules (which are not in evidence), merely state that there is no further accrual of service after rehire, and do not address age. ECF No. 388, at 6.

Defendants could have sought to exclude rehired individuals from the Class definitions and litigated this issue on the merits, but chose not to. To the extent they otherwise come within the Class definitions, these rehired individuals are Class members entitled to a remedy.

IV. The Proposed Remedies Are Proper With Respect to All Defendants Who Were Named for Counts II and IV.

Defendants confusingly assert that Plaintiffs' proposal is improper with respect to "non-plan" and "non-fiduciary" defendants. This assertion is meritless.

First, it is important to know that Plaintiffs assert Count II only against the Administrative Committee (the Plan administrator) and the Plan. *See* ECF No. 102, at 37 (Count II of Second Amended Class Action Complaint). Moreover, the Proposed Final Judgment and Order does not seek relief with respect to this Count from any other Defendant. Instead, Plaintiffs seek declaratory and injunctive relief requiring the Administrative Committee to give notice of and process the claims of Optional Retirement Class members, and the Plan to pay elected benefits. Thus, Plaintiffs seek proper relief from the proper Defendants with respect to this Count II, and it is unclear what Defendants are arguing in this regard.

Second, Plaintiffs assert Count IV against Corteva, E.I. DuPont de Nemours and Company (Historical DuPont), DuPont Specialty Products, and the Administrative Committee, not against New DuPont and not against the Plan. *See* ECF No. 102, at 39 (Count IV). Thus, Defendants' assertion that the Plan itself is not a fiduciary is true but irrelevant since the Plan has not been sued as such. Moreover, all of the Defendants named in Count IV were fiduciaries with respect to the misleading communications. As Plaintiffs previously argued in their post-trial brief on liability, ECF No. 295 at 16 of 28, all four Defendants named in Count IV had disclosure obligations as fiduciaries. Historical DuPont was the Plan sponsor for over 100 years, employed members of both Classes prior to the spin-off, and was responsible for appointing the members of the Administrative Committee. *See* Exh. P-1 (Section II). In its role as an employer and plan sponsor, Historical DuPont was responsible for its own miscommunications, *see Varity v. Howe*, 516 U.S. 489, 498 (1996) (employer acted in fiduciary capacity when communicating with employers about benefits), and as an appointing fiduciary, it was responsible for the inadequate and misleading communications from the Administrative Committee. *Mehling v. New York Life Ins. Co.*, 163 F. Supp. 2d 502, 509-10 (E.D. Pa. 2001) (the power to appoint and retain other fiduciaries is itself a

fiduciary function; citing *Coyne & Delany Co. v. Selman,* 98 F.3d 1457, 1464–65 (4th Cir.1996)); *Hickman v. Tosco Corp.,* 840 F.2d 564, 566 (8th Cir.1988). Historical DuPont is now a part of Corteva, which has taken on these same roles and responsibilities after the spin-off. Specialty Products became Plaintiffs' employer just prior to the spin-off and remained their employer thereafter, and, like Historical DuPont and the Administrative Committee, Specialty Products communicated in a misleading and inadequate manner with Plaintiffs about their benefits. ECF No. 318, ¶ 375.

Finally, as with Count II, it is not clear what relief Defendants believe is improper with respect to Count IV. As equitable relief to remedy the misleading communications, Plaintiffs seek reformation of the Plan to allow Early Retirement Class members to elect Early Retirement benefits, and accompanying notice and processing of such claims by the Administrative Committee. These remedies are available, ideally suited to remedying the fiduciary breaches at issue here, and do not require any non-fiduciary to do anything.

V. Early Retirement Class Members Who Attain or Have Attained the Age of 50 While Employed by New DuPont Need Not Terminate Their Employment With New DuPont to Obtain Benefits.

Defendants argue that Early Retirement Class members must terminate employment with New DuPont in order to elect Early Retirement benefits once they have attained the age of 50 because Plan terms (which they do not specify) so require. ECF No. 396 at 9 of 12. Plaintiffs do not agree for one simple reason. The Plan terms on which Defendants presumably rely require an "employee" to "retire" or "terminate employment" from the "Company," *see* Exh. P-1, Title IV, which the Plan elsewhere defines as "E.I. du Pont de Nemours and Company and/or any wholly owned subsidiary or part thereof which adopts the Plan" (Historical DuPont). *Id.*, Title IX A(7). Thus, nothing in the Plan requires termination of employment with *New DuPont*. Early Retirement

Class members no longer work for historical DuPont; they need not terminate employment with New DuPont in order to obtain these benefits. As noted by the Court, so called "double dippers" were allowed to commence Early Retirement benefits without terminating their employment with New DuPont. Class members are merely seeking equivalent treatment. ECF No. 318, ¶ 357.

VI. This Court Should Not Defer to the Plan Administrator With Respect to an Amendment.

Defendants contend that this Court should not adopt Plaintiffs' proposed amendment in order to reform the Plan but should instead "direct the Plan Administrator to draft an appropriate and ERISA-compliant Plan amendment that effectuates the Court's judgment." ECF No. 396, at 4 of 12. They also assert that "[d]rafting ERISA-compliant Plan amendments requires collaboration between the Plan Sponsor, the Plan Administrator, benefit consultants, lawyers, and the like," and that the "amendment needs to be in conformity with prior amendments." *Id*.

What is meant by the latter point is entirely unclear. But more importantly, all of this ignores that the Plan Administrator, along with the Plan sponsor[s], have been found by this Court to have engaged in a prolonged course of fiduciary misconduct with respect to communications with Plan participants, as well as misreading and misapplying Plan provisions. Why they should be trusted to do a better job now is not apparent and it seems very unlikely that this will be a more efficient process.

Finally, although Defendants assert that the court in *Cottillion* handled an amendment in the manner they argue is appropriate here, *i.e.*, by allowing the breaching fiduciaries to amend the Plan in the manner of their choosing, the order they attach as Exhibit B and cite for this proposition does no such thing. *See* ECF No. 396-2. To the contrary, the remedy ordered by the *Cottillion* court did not entail any Plan amendment whatsoever.

As ordered by this Court, ECF No. 397 ¶ 4, Plaintiffs met and conferred with Defendants on May 20, 2025, but could reach no agreement about the contents of a Plan amendment. Therefore, Plaintiffs request that this Court order reformation of the Plan through the Plan amendment language proposed by Plaintiffs. ECF No. 387-3.

VII. Plaintiffs Should be Empowered to Communicate With Alight Or Any Other Claims Administrator Regarding Claims Processing and Benefits Administration Under the Court's Order in This Case.

Finally, this Court has asked whether Plaintiffs wish to communicate directly with Alight to the extent that Defendants intend to rely on Alight to process remedies in this case. The answer is yes. Plaintiffs believe it is appropriate and necessary that they be empowered, though Class counsel, to communicate directly with any entity that will be processing the benefit claims of Class members in this case. Along these lines, Plaintiffs request that this Court retain jurisdiction over the matter to resolve claims processing issues with respect to the claims of Class members as they arise, presumably with the aid of the Special Master.

CONCLUSION

For the foregoing reasons, and as previously argued in Plaintiffs' Memorandum Supporting Proposed Final Judgment and Order, ECF No. 388, Plaintiffs respectfully request that this Court order that Defendants send a written notice by mail and email to each Optional Retirement Class member, including such members described above, informing them that they were eligible for such benefits as of the spin-off on June 1, 2019, and include an election form giving them the opportunity to elect Optional Retirement benefits as of that date or any date of their choosing thereafter, including lump sum back benefits with interest. Plaintiffs also request that this Court reform the Plan to provide that members of the Early Retirement Class are eligible for Early Retirement benefits once they reach the age of 50 while still employed by DuPont de Nemours,

Inc. (New DuPont) or any of its subsidiaries, order that summary plan descriptions be amended to reflect the same, and require that Defendants send notice and election forms by mail and email allowing Early Retirement Class members, including the members described above, to elect benefits at a date of their choosing after reaching age 50, including lump sum back benefits with interest.

Respectfully submitted,

DATED: May 22, 2025

By: */s/ Nina Wasow*

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2025, a true and correct copy of **PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' PROPOSED JUDGMENT AND MEMORANDUM OF LAW** was filed using the Court's CM/ECF system, and thereby served copies of same on counsel for all parties of record registered with the ECF system as follows:.

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