

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

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PUTNAM CO. CIRCUIT COURT
RONNIE W. MATTHEWS
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ZINA G. BIBB, et al,

Plaintiffs,

v.

Civil Action No.: 04-C-465
Derek C. Swope, Judge

MONSANTO COMPANY, et al.,

Defendant

AGREED ORDER ADOPTING MODIFICATIONS TO MMCSA

On this day came the Class Administrator, Thomas V. Flaherty, Esq.; Defendants Monsanto Company, et al., by counsel Charles M. Love, III, Esq., and Floyd E. Boone Jr., Esq.; and Class Counsel, through Stuart Calwell, Esq., and David H. Carriger, Esq., and, in accordance with the Court's directive as set forth in its *Order* of May 24, 2017, reported to the Court that they had agreed upon certain proposed modifications to the Medical Monitoring Class Settlement Agreement ("MMCSA"), and the administration thereof, in order to resolve those concerns previously raised by Class Counsel, simplify the administration of the Medical Monitoring Program, and enhance the benefits provided through the Medical Monitoring Program to Eligible Class Members.

The Court, having thoroughly reviewed the proposed modifications to the MMCSA, hereby **FINDS** and **ORDERS** the following:

1. The Court approves and adopts the Parties' proposed modifications as set forth in Exhibit A, attached hereto. Exhibit A is incorporated by reference in the MMCSA without further action by the Parties or the Court.

2. Based on Exhibit A and the representations of counsel for the Parties, the Court finds that the Triggering Event did not occur in the Initial Screening Period and is unlikely to ever occur. As a result, the Court finds that the elimination of serum dioxin testing from the Medical Monitoring Program and the elimination of the Triggering Event from the MMCSA is fair, reasonable, and adequate to the Eligible Class Members and should be approved by the Court.
3. The Court finds that the modifications set forth in Exhibit A will provide all Participants (as defined in Section 2.24 of the MMCSA) with the full benefit of Screening Periods occurring on a 2-year cycle for the remainder of the Medical Monitoring Settlement Program. The Putnam County Circuit Clerk is authorized and directed to pay \$3,000,000.00 from the Contingent Attorney's Fees Fund,¹ established by Court order dated January 23, 2013, to Class Counsel within three business days of entry of this Order. The Putnam County Circuit Clerk is further authorized and directed to return the remaining balance in said Fund to Monsanto Company within three business days and to then close out said Fund account.
4. The Court grants Class Counsel's pending oral motion to recover costs associated with its Court-ordered involvement in the implementation of the Medical Monitoring Settlement Program. The Class Administrator is authorized and directed to pay Class Counsel the amount of \$83,500.72 from the Attorneys' Fees Escrow Account within three business days of entry of this Order.

¹ See page 29 of the January 23, 2013 "FINAL ORDER AWARDING ATTORNEYS' FEES AND LITIGATION EXPENSES AND AWARDING CLASS REPRESENTATIVES' INCENTIVE PAYMENTS". See, also, "ORDER DIRECTING DEPOSIT OF \$6.5 MILLION IN CONTINGENT ATTORNEY'S FEES" entered July 15, 2014 and filed with the Circuit Clerk of Putnam County on July 16, 2014.

5. The Courts finds that the modifications set forth in Exhibit A have rendered Class Counsel's ongoing discovery dispute with Thomas Hospital as moot. Accordingly, Thomas Hospital's pending *Motion to Quash Subpoena and for Protective Order* is dismissed.
6. The Court directs the Class Administrator to notify Participants of the modifications to the scheduled Screening Periods and to specifically notify those Participants who were previously ineligible for serum dioxin testing because they were younger than 20 years of age during the Initial Screening Period of the modification that particularly affects them.
7. The Court will continue to retain jurisdiction over this Action and the Parties pursuant to Section 12.1 of the MMCSA and pursuant to the *Court's Order Approving Final Settlement* in this matter.


It is so **ORDERED**.

The Clerk shall forward copies of this Order the following counsel of record, as well as counsel of record for Thomas Hospital.

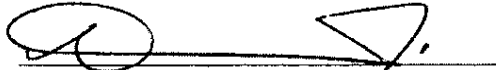
Entered this 8th day of September, 2017.


Honorable Derek Swope, Circuit Judge

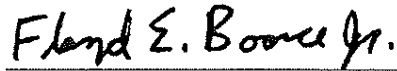
Presented by:


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Agreed to by:



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Counsel for Defendants

9/8/17
4 copies (certified) to S. Calwell to distribute

EXHIBIT A

AGREED MODIFICATIONS TO THE MEDICAL MONITORING PROGRAM

RECITALS

1. Within these Agreed Modifications to the Medical Monitoring Program, unless the context requires a different construction, capitalized terms have the meanings ascribed to them in the Medical Monitoring Class Settlement Agreement (“MMCSA”).
2. The Medical Monitoring Program provided by the MMCSA began in 2013 with the registration of Eligible Class Members.
3. Following the submission of registration documentation, the Class Administrator found that 1529 Eligible Class Members had registered for the Medical Monitoring Program.
4. Out of the 1529 Eligible Class Members, approximately 479 Eligible Class Members elected to participate in the Initial Screening Period.
5. Of the approximately 479 Eligible Class Members who participated in the Initial Screening Period, blood samples taken from approximately 427 Eligible Class Members were submitted to the Laboratory for serum dioxin testing.
6. A small number of Eligible Class Members were ineligible for serum dioxin testing because they were younger than 20 years of age. (See MMCSA, Ex. D ¶ 2 (“Serum dioxin testing will be available for eligible class members aged 20 years and older.”))
7. For purposes of the Triggering Event, the Laboratory and Monsanto Company’s analytical chemist, Dr. Donald Patterson, concluded that none of the tested samples demonstrated dioxin levels in excess of the background range specified in the MMCSA and that the Triggering Event had not occurred.

8. Class Counsel expressed concerns regarding the collection, handling, processing, shipment and analysis of the blood samples, and, ultimately, the reliability of the blood sampling results.

9. Following extensive discussions among the Parties with respect to the collection, handling, processing, shipment, and testing of the blood samples, Class Counsel concedes that, despite the existence of various concerns regarding the reliability of the blood samples, the Court would likely conclude that the Triggering Event did not occur during the Initial Screening Period.

10. Class Counsel also concedes that the likelihood of a Triggering Event occurring in any subsequent Screening Period is unlikely, given various factors including the amount of time that has elapsed and the cleaning of numerous residences within the Class Area as a result of the Property Class Settlement Agreement.

11. Based on the foregoing extensive discussions among the Parties, the Parties have agreed to eliminate serum dioxin testing in subsequent Screening Periods and to eliminate all provisions in the MMCSA pertaining to the Triggering Event.

12. In addition, based on the foregoing extensive discussions among the Parties, the Parties have agreed that, henceforth, Eligible Class Members shall have the benefit of receiving the maximum number of Screening Periods that would have been possible under the MMCSA (without the need for or use of the Triggering Event). Going forward, Screening Periods will occur every two years beginning in the Screening Period that will begin in 2018, with the final Screening Period commencing in 2042.

13. The Parties agree that serum dioxin testing provided by the MMCSA was never provided for diagnostic purposes. (MMCSA, Ex. D ¶ 1 (“Serum dioxin testing will be performed for eligible class members. The purpose is not diagnostic in nature but rather to determine whether a Triggering Event as defined in Section 6 below has occurred.”).)

14. The MMCSA generally provides that it may be modified through a written agreement between Class Counsel and Counsel for Defendants. (MMCSA ¶ 14.4 (“This MMCSA represents an integrated document negotiated and agreed to between the Parties and shall not be amended, modified, or supplemented, nor shall any of its provisions be deemed to be waived, unless by written agreement signed by Class Counsel and Counsel for Defendants.”).)

Based on the foregoing recitals, the Parties agree to the following modifications of the MMCSA:

A. Screening Periods for all Eligible Class Members shall occur every two years, commencing in 2018 and continuing on that basis until the Screening Period that will commence in 2042. The 2018 Screening Period shall commence on a date to be specified by the Class Claims Administrator.

B. Defendants will deposit \$3 million into the Fund prior to the commencement of each Screening Period.

C. For the 2018 Screening Period only, those Participants who were previously ineligible to obtain serum dioxin testing based on their ages at the time of the Initial Screening Period may elect to obtain serum dioxin testing. For these Participants, Sections 1 (except for the last sentence), 3, 4, 5.1, and 5.2 of Exhibit D to the MMCSA shall govern the collection, analysis, and reporting for these serum dioxin tests.

D. Except for the limited purpose set forth above in Modification C, Exhibit D to the MMCSA is hereby stricken and eliminated from the MMCSA.

E. Except for the limited purpose set forth above in Modification C, Section 6.2 of Exhibit E to the MMCSA is hereby stricken and eliminated from the MMCSA.

F. Sections 2.28, 3.11 (except for the first two sentences), and 4.2(g), (h), (i), and (j) of the MMCSA are hereby stricken and eliminated from the MMCSA.

G. For the convenience of Participants, the Hospital shall maintain in one file all documentation pertaining to each Participant and his/her examination. The file shall include all documentation pertaining to the Participant, including but not limited to intake documentation, consent forms, notes, photographs, laboratory notes, and any other documentation pertaining to the examination and tests conducted pursuant to Exhibit E of the MMCSA as modified by Modification E herein.

H. These modifications shall supersede any inconsistent provisions in the MMCSA.