

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JACK W. LEACH, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 01-C-608
(Judge Hill)

E. I. DU PONT DE NEMOURS AND COMPANY.

a Delaware corporation,

Defendant.

**ORDER GRANTING PLAINTIFFS' SECOND
MOTION FOR SANCTIONS AGAINST DUPONT**

On April 18, 2003, came Plaintiffs, by their counsel, Robert A. Bilott, Larry A. Winter, and R. Edison Hill; Defendant E. I. du Pont de Nemours and Company ("DuPont"), by its counsel, Laurence F. Janssen, Stephen A. Fennell, Diana Everett, and Heather Heiskell Jones; and Defendant Lubeck Public Service District, by its counsel, John R. McGhee, for a hearing on Plaintiffs' Second Motion for Sanctions Against DuPont. As explained below, the Court hereby **GRANTS** Plaintiffs' Second Motion for Sanctions Against DuPont.

The Court, having considered the pleadings and filings of the parties in support of and in opposition to Plaintiffs' Second Motion for Sanctions Against DuPont, including the results of the deposition of Gerald R. Kennedy and having taken under further advisement and consideration the arguments and representations of counsel during the July 16, 2002 and April 18, 2003, hearings on this Motion, hereby **FINDS** as follows:

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CAROLE JONES
CLERK CIRCUIT COURT

1. DuPont violated this Court's February 1, 2002, Order by failing to produce all documents responsive to Plaintiffs' outstanding document requests within twenty (20) days.

2. DuPont violated this Court's April 4, 2002, Order giving DuPont until April 19, 2002, to complete document production, which included this Court's specific warning that if its document production was not completed by April 19 "appropriate sanctions will be imposed on DuPont."

3. While Plaintiffs' Second Motion for Sanctions was pending, DuPont acknowledged in a letter to the Court dated July 2, 2002, that Gerald R. Kennedy, DuPont's lead toxicologist on C-8 issues, had destroyed evidence relating to C-8 while Plaintiffs' discovery requests for that evidence were pending.

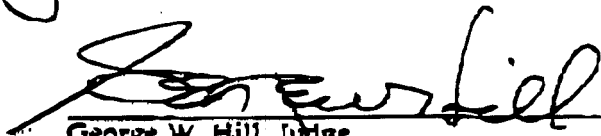
4. DuPont, without adequate justification or excuse, engaged in spoliation of evidence through Mr. Kennedy's destruction of written and electronic documents as described in paragraph 3 above, and has continued to produce thousands of pages of historic C-8 documents after August 16, 2002, despite this Court's August 8, 2002, Order that DuPont certify that it had produced all responsive historic C-8 documents by no later than August 16, 2002.

Upon careful consideration and balancing of the various equitable considerations and factors addressed by the parties and their pleadings, filings, and oral argument concerning the context and nature of the conduct at issue, along with the potential and actual prejudice to Plaintiffs from such conduct and the evidence in the record to date relating to Plaintiffs' proposed sanctions, as clarified during oral argument on April 18, 2003, the Court hereby **CONCLUDES** that the monetary sanctions requested by Plaintiffs, in addition to the negative inference jury instruction that this Court previously ruled would be provided at trial, are fair, equitable, and appropriate as sanctions under Rule 37 of the West Virginia Rules of Civil Procedure, and are hereby **GRANTED**. Consequently,


it is hereby ORDERED that DuPont shall pay the attorneys fees, costs and expenses reasonably incurred by Plaintiffs in addressing and bringing to the Court's attention DuPont's violations of its discovery obligations, including violations of the Court's February 1, 2002, April 4, 2002, and August 8, 2002 Orders. Plaintiffs shall submit to the Court an affidavit identifying the total amount of attorneys fees, costs, and expenses to be paid by DuPont.

DuPont excepts and objects to the Court's rulings herein.

ENTER this 29th day of April 2003.


George W. Hill, Judge
Circuit Court of Wood County, West Virginia

PRESENTED BY:



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STATE OF WEST VIRGINIA
COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 18th day of May, 2003, as fully as the same appears to me of record.

Given under my hand and seal of said Circuit Court, this the 5th day of May, 2003.


Carole Jones
Clerk of the Circuit Court of
Wood County, West Virginia
