

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

IN RE: IMPRELIS HERBICIDE
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION

Case No. 2:11-md-2284-GP

THIS DOCUMENT APPLIES TO:
ALL ACTIONS

SETTLEMENT AGREEMENT AND RELEASE

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This Settlement Agreement is submitted to the United States District Court for the Eastern District of Pennsylvania pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to Court approval, this Agreement is entered into between and among the following parties (the “Parties”), by and through their respective counsel: (i) Jeff and Kathy Bailey; Carey Bottom; Fred and Ranelle Brandt; Harlene Clark; Sammy Cope; Donna Cozad; Sam Gallo; Richard Shlansky-Goldberg and Patty Goldberg; Michael Golden; James Heinsimler; Charles Huffman; David H. Kinsey; Thor Larson; H. David Lunger; Peter and Kathleen Malone; Marsh Harbour Homeowners’ Association; Carole Meader; Jan and Christopher Meier; Tim Reynolds; Marsha Shomo; Gregg Westover; John and Margo Wilhelmsen; Mark Wilson; BW Real Estate, LLC and BW Golf Management, LLC; Colonial Pines Management, LLC; Fox Hills Golf & Banquet Center; Polo Fields Golf & Country Club; The Standard Country Club; Washtenaw Acquisition, LLC; Winding Ridge Golf Course; Capital Turf Management, Inc.; Perennial Services, LLC; Rossi Landscaping, Inc; Town & Country Landscape Management, LLC; and Jean Vorchak (“Class Representatives”) individually and as representatives of the Settlement Classes (as such classes are hereinafter defined) (collectively, “Class Members”); and (ii) E. I. du Pont de Nemours and Company (“DuPont”).

WHEREAS, there is a consolidated and coordinated multidistrict litigation pending in the United States District Court for the Eastern District of Pennsylvania, styled *In Re: Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation*, MDL 2284 (the “MDL Actions”), comprised of actions relating to Imprelis[®], a herbicide that DuPont previously marketed;

WHEREAS, Plaintiffs allege on behalf of themselves and all those similarly situated that Imprelis[®], an aminocyclopyrachlor methyl herbicide created, manufactured, and sold by DuPont, was unsafe for its intended use as well as otherwise inappropriately marketed and sold and

thereby caused damage to their property and trees and damage to the lawn care professionals who purchased and applied Imprelis[®] to their customers' properties;

WHEREAS, DuPont denies Class Members' claims in the litigation;

WHEREAS, the Parties agree that this Agreement shall not be deemed or construed as an admission or as evidence of any violation of any statute or law, or of any liability or wrongdoing by any of the Releasees, or of the merit of any of the claims or allegations alleged in the MDL Actions or the merit of any of the potential or asserted defenses to those allegations, or as a waiver of any such defenses;

WHEREAS, the Parties have conducted a thorough examination and investigation of the facts and law relating to the asserted and potential claims and defenses in the MDL Actions;

WHEREAS, Richard Arsenault, Adam Levitt, Hollis Salzman, and Jonathan Selbin ("Plaintiffs' Interim Co-Lead Counsel" or "Interim Co-Lead Counsel"), Robert Kitchenoff ("Plaintiffs' Liaison Counsel" or "Liaison Counsel"), and additional Plaintiffs' counsel ("Settlement Class Counsel") have conducted an extensive investigation relating to the alleged harm caused by Imprelis[®];

WHEREAS, Settlement Class Counsel, and DuPont's counsel began settlement discussions in January 2012, followed by formal mediation sessions conducted by the Hon. Diane M. Welsh (Ret.), as well as approximately nine months of extensive, arm's-length, adversarial, and, at times, contentious negotiations. Ultimately, through an extended series of in-person and telephonic mediation and negotiation sessions, the Parties were able to agree to this Settlement;

WHEREAS, Settlement Class Counsel have concluded, after extensive factual investigation and after carefully considering the circumstances of the MDL Actions, including

the claims asserted in the Master Class Action Complaint and the possible legal and factual defenses thereto, that it would be in Class Members' best interests to enter into this Agreement to avoid the uncertainties, burdens, risks, and delays inherent in litigation, and to assure that the substantial benefits reflected herein are obtained for the Settlement Classes in an expeditious manner, and, further, that this Agreement is fair, reasonable, adequate, and in the best interests of Class Representatives and the other Class Members;

WHEREAS, DuPont, despite its belief that it has strong defenses to the claims described herein, has agreed to enter into this Agreement to reduce and avoid the further expense, burden, and inconvenience of protracted litigation, and to resolve finally and completely Class Members' claims;

WHEREAS, DuPont, through its counsel, and Settlement Class Counsel, after months of vigorous, arm's-length negotiations, have, subject to Court approval, conditionally agreed to the settlement ("Settlement") set forth in this Agreement;

WHEREAS, following execution of this Agreement, Class Representatives shall amend the Complaint to conform it to these Settlement Classes (as defined below) and make such other amendments as are necessary to make it consistent with this Settlement;

NOW, THEREFORE, the undersigned counsel on behalf of DuPont and Settlement Class Counsel on behalf of the Settlement Class Members agree that the MDL Actions shall be settled, compromised, and/or dismissed with prejudice on the terms and conditions set forth in this Agreement, and without costs to DuPont (except as provided herein), subject to Court approval of this Agreement as a good faith, fair, reasonable, and adequate settlement under Fed. R. Civ. P. 23(e).

I. CLASS DEFINITIONS

The Parties agree and consent, for settlement purposes only, to the certification of the following “opt-out” classes under Fed. R. Civ. P. 23(b)(3) and (c)(2)(B) in the MDL Class Actions (collectively, the “Settlement Classes”):

Property Owner Class (Class 1):

All persons or entities who (a) own or owned property in the United States to which Imprelis[®] was applied from August 31, 2010 through August 21, 2011, or (b) own or owned property in the United States adjacent to property to which Imprelis[®] was applied from August 31, 2010 through August 21, 2011 and whose trees show damage from Imprelis[®] on or before the date of entry of the Preliminary Approval Order (“Adjacent Property Owner”). Excluded from Class 1 are (1) any Judges to whom this Action is assigned and any members of their immediate families, and (2) any property owners whose properties were used for the testing of Imprelis[®] or developmental formulations containing the same active ingredient.

Applicator Class (Class 2):

All persons or entities that, from August 31, 2010 through August 21, 2011, purchased Imprelis[®] (and/or received Imprelis[®] directly or indirectly from a purchaser) and applied it to property in the United States as part of their normal business, other than property that they own or owned (“Applicators”). Excluded from Class 2 are any Judges to whom this Action is assigned and any members of their immediate families.

Golf Courses or Other Self Applicators Class (Class 3):

All persons or entities that, from August 31, 2010 through August 21, 2011, purchased Imprelis[®] (and/or received Imprelis[®] directly or indirectly from a purchaser) and applied it to properties in the United States that they own or owned (“Self Applicators”).

Excluded from Class 3 are any Judges to whom this Action is assigned and any members of their immediate families.

II. OTHER DEFINITIONS

As used in this Agreement and its Exhibits, the following terms shall have the meanings set forth below. Terms used in the singular shall include the plural and vice versa.

- A. “Agreement” means this Settlement Agreement, together with the Exhibits attached hereto, which are incorporated herein by this reference.
- B. “CAFA Notices” means the notice of this Settlement to be served upon state and federal regulatory authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.
- C. “Claimant” means any Settlement Class Member (as defined below) who submits an Inspection Request Form (as defined below) in such form and manner, and within such time, as set forth in this Agreement.
- D. “Claims Administrator” and “Claims Office” mean Rust Consulting, Inc., an independent professional service company.
- E. “Claims Deadline” means the date by which any and all Claimants must submit an Inspection Request Form; the exact date is set forth in Section IV.F.
- F. “Claim Form” means the form submitted on behalf of property owners as part of the Imprelis® Claim Resolution Process.
- G. “Claim Resolution Agreement” or “CRA” means the document by which DuPont specifies to property owners the compensation for resolution of claims for Imprelis® damage, which includes a release of claims if properly executed by the property owner. This Agreement divides CRAs into two categories: Initial CRAs and Transitional CRAs.
 - a. “Initial CRA” means any Claim Resolution Agreement issued by DuPont up until DuPont begins issuing Transitional CRAs (as defined below), on or after the date of the Preliminary Approval Order. Although these CRAs change from time to time, an example Initial CRA is attached as Exhibit 1.
 - b. “Transitional CRA” means a Claim Resolution Agreement that contains release and warranty language set forth in this Agreement and will be issued on or after the date of the Preliminary Approval Order. Some Initial CRAs may continue to be issued after Transitional CRAs begin being issued. Transitional CRAs will contain form language substantially similar to that in Exhibit 2.
- H. “Class Period” means August 31, 2010 through August 21, 2011.

- I. “Class Releasers” means each Settlement Class Member (as defined below), including all Class Members as well as their successors, heirs, executors, trustees, administrators, assigns, predecessors, affiliates, related companies, subsidiary companies, holding companies, insurers, affiliates, current and former attorneys, and their current and former members, partners, officers, directors, agents, and employees, in their capacity as such.
- J. “Complaint” means Plaintiffs’ Master Class Action Complaint, filed as Docket No. 66 in this litigation, and any amendments from the time of execution of this Agreement up to and including the time of filing of the Motion for Preliminary Approval.
- K. “Court” and “MDL Court” mean the Honorable Gene E. K. Pratter, or if she is unavailable, another judge of the United States District Court for the Eastern District of Pennsylvania presiding over *In Re: Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation*, MDL 2284.
- L. “DuPont” shall mean E. I. du Pont de Nemours and Company.
- M. “Effective Date” is the date defined in Section III.I of this Agreement.
- N. “Fee and Expense Application” means the application of Settlement Class Counsel for the award of attorneys’ fees and expenses, and incentive awards for the Class Representatives, as provided in Section VII.B of this Agreement.
- O. “Fee and Expense Award” means any order by the Court granting, in whole or in part, the Fee and Expense Application.
- P. “Final” with respect to this Agreement means that the time has expired for any appeals from a Final Approval order of the MDL Court, or any such appeals have been resolved in favor of this Agreement.
- Q. “Final Approval” means the MDL Court’s last action that settles the rights of the Parties and disposes of all issues in controversy, except for the Fee and Expense Award and enforcement of the judgment.
- R. “Final Fairness Hearing” means the hearing conducted by the Court in connection with determining the fairness, adequacy, and reasonableness of this Agreement under Fed. R. Civ. P. 23(e). The date of the Final Fairness Hearing will be communicated to the Settlement Classes in a Court-approved notice pursuant to this Agreement and in accordance with Fed. R. Civ. P. 23(c)(2).
- S. “Imprelis[®] Claim Resolution Process” means the process for resolving claims by property owners for Imprelis[®] damage being administered by DuPont.
- T. “Inspection Request Form” means a notification, substantially in the form set forth in Exhibit 3 (the Class 1 and 3 Inspection Request Form) and 4 (the Class 2

Expense Reimbursement Request Form), submitted by a Settlement Class Member expressing the intent to participate in the Settlement.

- U. “Joint Bank Account” means the account established pursuant to Section IV.B.1 of this Agreement.
- V. “Long-Form Notice” means the two full long-form notices of the Settlement to be submitted to the Court for approval and to be made available to Class Members who request a copy and to be posted on the Settlement Website. The proposed Long Form Notice is attached as Exhibit 5 (Long Form Notice for Class 1 and 3) and Exhibit 6 (Long Form Notice for Class 2).
- W. “Maintenance Trees” mean trees that require care due to damage caused by Imprelis[®] but, presently, do not qualify for removal and replacement.
- X. “Notice Fund” means the fund used to pay notice expenses pursuant to this Agreement, subject to the MDL Court’s jurisdiction and oversight.
- Y. “Notice Plan” means the plan for providing notice to the Settlement Classes in accordance with Fed. R. Civ. P. 23, as set forth in Exhibit 7.
- Z. “Opt-Out” means any Settlement Class Member who timely and validly submits a request for exclusion from one or more of the Settlement Classes in accordance with the procedures set forth in this Agreement and the Long-Form Notice.
- AA. “Opt-Out Deadline” is defined in the table at Section IV.F.
- BB. “Opt-Out List” means a list compiled by the Claims Administrator of the persons that have requested to opt-out of any of the Settlement Classes.
- CC. “Preliminary Approval Order” means the order preliminarily approving the Settlement, authorizing the creation of the Notice Fund, authorizing and directing dissemination of the Long-Form Notice and Publication Notice to the Settlement Classes, and providing for the Final Fairness Hearing. The proposed form of the Preliminary Approval Order is attached as Exhibit 8.
- DD. “Publication Notice” means the summary form of electronic and/or print notice of the proposed Settlement to be provided to Class Members subject to approval of the Court, substantially in the form attached hereto as Exhibit 9.
- EE. “Qualified Trees” mean trees with damage caused by Imprelis[®] that qualify for removal and replacement.
- FF. “Qualified Tree Providers” means tree providers that have agreed and been qualified to provide replacement trees as part of the Imprelis[®] Claim Resolution Process or the Settlement Claim Process.

- GG. “Released Claims” means any and all claims released by this Agreement, as detailed in section VI.
- HH. “Releasees” means DuPont, along with its parent(s) and each of its predecessors, affiliates, assigns, successors, related companies, subsidiary companies, holding companies, insurers, reinsurers, current and former attorneys, and their current and former members, partners, officers, directors, agents, and employees, in their capacity as such, any distributors, retailers, professional applicators, lawn care professionals (“LCOs”), and their insurers, and affiliates, in their capacity as such, and other Class Members.
- II. “Replacement Trees” mean new trees that are planted on a Class Member’s property by Qualified Tree Providers pursuant to this Agreement.
- JJ. “Settlement Claim Form” means the form(s) for submitting claims under the Settlement Claim Process substantially in the form(s) attached hereto as Exhibits 10, 11, 12, and 13.
- KK. “Settlement Claim Process” means the process set forth under this Agreement for the submitting, evaluation, and payment of Imprelis[®]-related Claims.
- LL. “Settlement Class Member” or “Class Member” means a member of one or more of the Settlement Classes, excluding Opt-Outs.
- MM. “Settlement Notice” means the notices, subject to Court approval, substantially in the form and following the procedures attached as Exhibits 7 (Notice Plan), 5 (Long Form Notice For Class 1 and 3), 6 (Long Form Notice for Class 2), 9 (Publication Notice).
- NN. “Settlement Website” means the website under the Uniform Resource Locator (URL) www.TreeDamageSettlement.com, which is established and maintained by Interim Co-Lead Counsel through the Claims Administrator, as directed by the Preliminary Approval Order.
- OO. “Spray Records” means documents prepared contemporaneously to the application of Imprelis[®], or contemporaneous summaries of such documents prepared in the ordinary course of business, that demonstrate the application of Imprelis[®] on a specific property during the Class Period.

III. SETTLEMENT TERMS

A. Limited Certification of Settlement Classes Only

DuPont conditionally agrees and consents to certification of the Settlement Classes for settlement purposes only, and within the context of this Agreement only. The Parties’ willingness to enter into the Agreement is not an admission as to the propriety or impropriety of

a litigation class in this or any other litigation. Except as to the particular Settlement Classes defined in the Agreement, and for the limited purposes of this Agreement, no party or other litigant shall use any Party's consent to this Agreement as the basis for arguing that a litigation class may or may not be certified.

B. Agreement Not Admissible

Neither the Agreement nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement is intended to be or may be construed as or deemed to be evidence of an admission or concession by DuPont of any liability or wrongdoing or of the truth of any allegations in the Complaint against DuPont, or by DuPont as evidence of any infirmity of, or strength of any alleged defense against, the allegations in the Complaint, and none of them shall be admissible in evidence for any such purpose in any proceeding. The Parties' consent to this Settlement is contingent upon this Agreement becoming Final. If this Agreement, for any reason, does not become Final or is otherwise terminated, the Parties reserve their respective rights to reassert all of their claims, allegations, objections, and defenses to certification of any class for litigation purposes, and the Parties further agree that neither will offer this Agreement, nor any statement, transaction or proceeding in connection with the negotiation, execution, or implementation of this Agreement, as evidence in support or opposition of a motion to certify any class or for any other litigation purpose.

C. Terms of Recovery/Consideration for Settlement/Claims Process

1. Recovery for Property Owners (Class 1/Class 3)

- a. In full and final settlement of the claims of Class 1 and Class 3 Members, DuPont will make available to all Class 1 and Class 3 Members the following relief agreed to under this Settlement:

- i. Payment for Trees. DuPont agrees to pay for Qualified Trees as enumerated in Exhibit 14 and pursuant to the schedule set forth in Exhibit 15. Class 1 and Class 3 Members will be paid compensation for Qualified Trees and any additional compensation by check from DuPont. They may (but are not required to) use that compensation to purchase Replacement Trees from Qualified Tree Providers, who will provide Replacement Trees at the prices and subject to the conditions set forth in Exhibit 16. Should a Settlement Class Member believe that a Qualified Tree Provider has acted in bad faith in implementing the Settlement Claims Process, Settlement Class Counsel shall meet and confer with counsel for DuPont and, if appropriate, the Qualified Tree Provider in a good faith attempt to resolve any dispute. Should any dispute remain, the Parties shall bring any such dispute to the Court.
- ii. Tree Removal. DuPont agrees to arrange for removal of Qualified Trees at no cost to Class Members, subject to the ratings and terms set forth in Exhibits 14 and 17.
- iii. Tree Care and/or New Tree Maintenance Program. For Replacement Trees and Maintenance Trees, DuPont will pay Class 1 and Class 3 Members pursuant to the schedule set forth in Exhibit 18.

- iv. Determinations of Imprelis[®] Damage. Whether a particular tree was damaged by Imprelis[®], whether Imprelis[®] damage qualifies a particular tree as a Qualified Tree, and whether the Imprelis[®] damage qualifies a particular tree as a Maintenance Tree will be made pursuant to the requirements of Exhibits 19 and 20.
- v. Class 1 and Class 3 Members claiming damage shall be required to provide Spray Records demonstrating Imprelis[®] use on or adjacent to the Settlement Class Member's property. For good cause shown, DuPont may, in its discretion, waive the requirement of Spray Records and accept a declaration of the Applicator who applied the Imprelis[®] demonstrating Imprelis[®] use during the Class Period on the Settlement Class Member's property or other documentation acceptable to DuPont. In cases where DuPont deems this declaration insufficient, the Claimant (through Settlement Class Counsel) and DuPont shall take reasonable efforts to obtain proof of whether it is in fact a property on which Imprelis[®] was applied.
- vi. In cases where an Adjacent Property Owner is unable after reasonable efforts to provide Spray Records for the property on which Imprelis[®] was allegedly applied, the Claimant may provide a declaration of the person or entity

who applied the Imprelis[®] to the adjacent property during the Class Period. In cases where DuPont deems this declaration insufficient, the Claimant (through Settlement Class Counsel) and DuPont will take reasonable efforts to obtain proof of whether it is in fact a property adjacent to a property on which Imprelis[®] was applied. In no event shall DuPont be required to provide compensation to an Adjacent Property Owner without valid proof of Imprelis[®] application to the property on which Imprelis[®] was allegedly applied during the Class Period. The release of Released Claims by an Adjacent Property Owner whose claim is rejected for failure to provide proof of Imprelis[®] use shall be deemed null and void, and that Adjacent Property Owner shall be restored to his, her, or its rights, *nunc pro tunc*, to the date of this Agreement without any release of claims.

- vii. Additional Payment. DuPont will also make an additional payment to Class 1 and Class 3 Members. The amount of the additional payment shall be 15% of the total value as specified in the CRA (including any modifications through the DuPont objection process or Panel appeal) of any payments and services DuPont is providing for tree removal, tree replacement, and tree care and new tree

maintenance. For the purposes of calculating the additional payment, the values for tree removal services DuPont is providing are set forth in Exhibit 17. For avoidance of doubt, the additional payment does not include 15% of the value of any warranties provided or warranty payments made.

- viii. Members of Class 1 and Class 3 seeking tree removal, tree replacement, and/or tree care and new tree maintenance who have not already submitted a claim in the Imprelis[®] Claim Resolution Process, must submit an Inspection Request Form postmarked no later than the Claims Deadline. Class Members who have already submitted a claim through the Imprelis[®] Claim Resolution Process, but who have not yet accepted a Claim Resolution Agreement, will be treated in the manner set forth in Section III.D below. Class 1 or 3 Members who fail to submit Spray Records or who otherwise fail to properly complete the Inspection Request Form will have such Inspection Request Forms rejected and returned for resubmission. Except as explicitly set forth in Section III.C.1.a.vi above with respect to Adjacent Property Owners, if material information remains deficient after three submissions (including the first submission), the Class Member shall only be eligible

to make a warranty claim (if the Class Member chooses to do so) and will otherwise be bound by this Agreement.

- ix. Limited Warranty. In addition to the current replacement tree warranty provision supported by DuPont's Qualified Tree Providers, DuPont will provide a Limited Warranty until May 31, 2015, as set forth in Exhibit 21.
- x. Claims Statistics and Potential Audit Process. Throughout the Settlement Claim Process, Interim Co-Lead Counsel and Liaison Counsel shall receive not less than quarterly reports containing summary statistics detailing the implementation of the Settlement Claim Process. This will include the number of Inspection Request Forms received, the number of CRAs issued, the number of Class 2 Members that have requested to support their customers' claims, and the number of checks issued pursuant to the Settlement Claim Process. In addition, Interim Co-Lead Counsel and/or Liaison Counsel may request a Court-approved independent person or entity, to be paid for by DuPont, to audit a sampling of the claims submitted by Class Members that the independent person or entity deems appropriate. This audit shall be limited to the accuracy of the statistics provided by DuPont. Should Interim Co-Lead Counsel and/or Liaison Counsel make this request of

DuPont, Interim Co-Lead Counsel and/or Liaison Counsel and DuPont will meet and confer on this request. DuPont may deny such request in its good faith discretion, subject to review of its discretionary decision by the Court.

- xi. Appeal Process. An appeal panel comprised of three arborists (the “Imprelis[®] Alternative Dispute Resolution Panel” or the “Panel”) shall be selected and proposed to the Court for approval and appointment. The Panel shall convene and begin overseeing appeals after this Agreement becomes Final. The Panel shall be comprised of the following members: (a) one arborist chosen by Interim Co-Lead Counsel and Liaison Counsel; (b) one arborist chosen by DuPont; and (c) one arborist chosen by the two arborists selected as specified above (the “Panel Members”). The Panel shall be authorized to review and determine appeals from the Settlement Claim Process, and decisions by DuPont relating to objections submitted in the course of the Imprelis[®] Claim Resolution Process (the “Appeal Process”). The Panel’s authority shall be limited to resolving questions or challenges relating to determinations of: (a) tree ratings; (b) the height, and if applicable, the circumference of trees at issue for valuation and tree care respectively; (c) the number of trees qualifying for

compensation from DuPont under the Settlement Claim Process; (d) whether a Class Member has provided adequate Spray Records; (e) warranty coverage; and (f) application of those requirements set forth in Exhibit 19. Panel Members shall be subject to The Code of Ethics for Arbitrators in Commercial Disputes, including the requirement that all arbitrators be neutral and comply with the same ethical standards. The Panel shall be jointly overseen by Settlement Class Counsel and DuPont as discussed in Section III.C.1.a.xi(d) below, and paid for by DuPont. In no event shall the Appeals Process provide more than the maximum compensation that could be available to the Class 1 or Class 3 Member under this Agreement. The Appeals Panel will not order or conduct additional site visits and will rule based on evidence presented by the Parties.

- (a) A Class 1 or Class 3 Member who submits an appeal or warranty request that is wholly without merit, as determined by the Panel, shall be required to pay \$75 to cover a portion of the costs of that appeal or warranty request;

- (b) A Class 1 or Class 3 Member who files a bad faith appeal or warranty request shall be required to pay a penalty, to be assessed by the Panel;
 - (c) Any Party maintains its rights to seek review from the Court; and
 - (d) Any Party may seek to have the Court remove, for cause, an arborist on the Panel. A replacement arborist for an arborist removed for cause by the Court shall be selected by the same procedures used to select the removed arborist in the first instance (e.g., if the removed arborist was chosen by Interim Co-Lead Counsel and Liaison Counsel, the replacement arborist shall be chosen by Interim Co-Lead Counsel and Liaison Counsel).
- xii. Notice of Appeal. Any Class 1 or Class 3 Member seeking to use the Appeals Process regarding any issue relating to the relief provided to them pursuant to this Agreement shall give DuPont 30 days' notice before filing such appeal to allow DuPont an opportunity to resolve the Class 1 or Class 3 Member's issue without an appeal. Notice of a class member's intent to appeal must be given by filing a Notice of Intent to File an Appeal form, substantially in the form of Exhibit 29, and must be submitted to the Claims

Administrator within 30 days after the Class Member receives notice that the Agreement has become Final or 30 days after the Settlement Class Member receives his, her, or its proposed CRA under the Settlement, whichever is later. Class 1 or Class 3 Members seeking to appeal the Panel's determination, and/or their counsel, shall meet and confer with Interim Co-Lead Counsel or Liaison Counsel and counsel for DuPont 30 days prior to filing an appeal with the District Court to see whether the issue can be resolved without an appeal.

- xiii. Reassessment. After receiving a Notice of Intent to File an Appeal from a Class 1 or Class 3 Member, DuPont may elect to reassess the property of such Settlement Class Member, including performing a site revisit should DuPont so choose. If DuPont elects to perform such a reassessment, DuPont reserves the right to use any tree evaluation or measurement observed during the reassessment (pursuant to the requirements of Exhibits 19 and 20) to recalculate the compensation offered, regardless of whether that tree was a subject of the appeal and regardless of whether the reassessment increases or decreases the compensation provided. If DuPont provides a revised assessment (a revised statement of compensation under the Settlement

prepared after the Agreement has become Final) or provides an Amended Claim Resolution Agreement before the filing of an appeal with the Panel, the revised assessment or Amended Claim Resolution Agreement shall be the operative assessment of the Settlement Class Member's property from that date, and the Settlement Class Member may either accept the revised assessment or Amended Claim Resolution Agreement or appeal from the revised assessment or Amended Claim Resolution Agreement. Settlement Class Members who receive an Amended CRA or are in discussions with DuPont after they file a Notice of Intent to Appeal will need to notify DuPont pursuant to the procedure set forth in Exhibit 29 if they still wish to Appeal, but they need not file another Notice of Intent to Appeal.

2. Recovery for Applicators that Applied Imprelis® (Class 2)

- a. In full and final settlement of the Released Claims of Class 2 Members, Class 2 Members will receive: (1) compensation for customer site visits, field work, and expenses incurred or paid to third parties related to investigating and documenting Imprelis® damage prior to September 6, 2011 (in a form substantially similar to that referenced in Exhibits 22 and 23); and (2) compensation for their participation (to the extent they are able to participate) in the Settlement Claim Process at the rates and as otherwise provided for

in Exhibit 24, after the Agreement becomes Final. Any Class 2 Member may seek reimbursement pursuant to DuPont's recall program (as set forth in Exhibit 25) (the "Recall Program"). The Recall Program will remain open, subject to the EPA order that authorizes and provides for the Recall Program. Any Class 2 Members that have signed releases related to Imprelis[®] are not eligible for the recovery provided in this section, except to the extent those releases have exceptions for the relief being sought.

- b. Additionally, any Class 2 Member, including those that did not previously participate in the Imprelis[®] Claim Resolution Process, may (i) elect to participate in support of their customers' claims in the Settlement Claim Process after the Agreement becomes Final, subject to all current procedures (including a site verification process substantially similar to that referenced in Exhibit 26), and/or (ii) execute an agreement to become a Qualified Tree Provider, assuming that Class 2 Member otherwise would qualify to become a Qualified Tree Provider. Promptly after the Effective Date, the Claims Administrator will publish notice on the Settlement Website requesting that any Class 2 members wishing to participate in support of their customers' claims in the Settlement Claim Process must contact the Claims Administrator within 60 days of the Effective Date. Any Class 2 Member electing to participate must agree to support any and all of their customers'

claims remaining in the Settlement Claim Process. Class 2 Members who elect in a timely fashion to support their customers' claims in the Settlement Claim Process will only be compensated for the completion of Claim Forms sent to them by DuPont for completion. The requirements and application to participate as a Qualified Tree Provider are set forth in Exhibit 16.

- c. By participating in this Agreement, Class 2 Members will not release any right to seek recovery from DuPont for claims of lost profits for business interruption and/or for suits brought against Class 2 Members arising out of their work relating to the application of Imprelis[®] that may be brought by those who have opted out of this Agreement.
- d. To be entitled to compensation for customer site visits, field work, and expenses incurred or paid to third parties prior to September 6, 2011, Class 2 Members must provide proof of purchase of Imprelis[®] and Spray Records for each property. To be entitled to compensation for participating in the Settlement Claim Process, Class 2 Members must provide proof of purchase of Imprelis[®] and Spray Records, and properly complete Settlement Claim Forms on behalf of their customers. Class 2 Members that fail to submit Spray Records or otherwise fail to properly complete Settlement Claim Forms will have such Settlement Claim Forms rejected and sent back to them for resubmission. If material information

remains deficient after three submissions (including the first submission), the Class 2 Member will not receive compensation for completing these Settlement Claim Forms but will be bound by this Agreement. Work performed to resolve incomplete or missing information on the Settlement Claim Forms will not result in additional compensation to those Class 2 Members.

3. Additional Recovery for Self Applicators of Imprelis® (Class 3)

Class 3 Members will be entitled to the benefits set forth above in Section III.C.1, provided to Class 1 Members. In addition, Class 3 Members will be entitled to receive payment for time and out-of-pocket expenses that they incurred in connection with investigating and documenting Imprelis® damage on their properties as well as payment for the administrative expenses of assisting in site investigations and claims processing by DuPont with respect to their properties. Class 3 Members will receive such compensation pursuant to terms substantially similar to those in Exhibits 27 and 28 in a total amount not to exceed \$2,000 per Class 3 Member. Any Class 3 Member that purchased Imprelis® may seek reimbursement pursuant to the Recall Program, but only to the extent that they have not already been reimbursed under the Recall Program. The Recall Program will remain open, subject to the EPA order that authorizes and provides for the Recall Program.

D. Transitional Claims Process

1. Settlement Class Members who have not previously submitted a Claim Form to DuPont may elect to participate in the Imprelis® Claim Resolution

Process and have their properties inspected and Claim Forms prepared up to the date set forth in the Class Notice.

2. Should this Agreement become Final, Class Members who do not provide DuPont with an objection to the CRA or provide a Notice of Intent to File an Appeal within 30 days after receiving notice that the Agreement has become Final or within 30 days of receiving a proposed CRA, whichever is later, will be deemed to have accepted their CRAs.
3. Settlement Class Members who do not opt-out by the Opt-Out Deadline will be Class Members and Releasers, should this Agreement become Final.
4. All Settlement Class Members who have previously executed CRAs from DuPont as part of the Imprelis[®] Claim Resolution Process, including those who already have received consideration, will be bound by these CRAs except as otherwise expressly provided in this Agreement should this Settlement become Final or in writing by DuPont. Should this Settlement become Final, these Settlement Class Members who have previously executed CRAs will receive the full benefits of this Settlement other than those relating to the Appeal Process.
5. **Appeal Process**
 - a. Settlement Class Members with a pending objection to a DuPont CRA who elect to participate in the Appeal Process, as opposed to having their appeal resolved by DuPont through the current objection process, may do so by submitting an “Notice of Intent to File an Appeal”

(substantially in the form set forth as Exhibit 29) to the Claims Administrator. The Notice of Intent to File an Appeal form must be sent to the Claims Administrator at the address on that form, along with all of the evidence on which a Class Member's Appeal will be based. DuPont may, in accordance with Section III.C.1.a.xii and III.C.1.a.xiii, attempt to resolve a Settlement Class Member's objection or appeal. Should DuPont rule on a Settlement Class Member's objection, the Settlement Class Member will need to determine whether to 1) accept the resolution offered by DuPont and have payment issued; 2) raise an appeal with the Panel after this Agreement is Final, and have compensation paid after the Panel ruling; or 3) opt-out by the Opt-Out Deadline, if that deadline has not passed. Class Members who wish to appeal a CRA must file a Notice of Intent to File an Appeal within 30 days after the Class Member receives notice that the Agreement has become Final or 30 days after receiving the CRA or Amended CRA, whichever is later. If a Class Member receives a determination from DuPont concerning the Class Member's objection and does not validly opt-out or provide file a Notice of Intent to File an Appeal within 30 days of receiving notice that the Agreement has become Final or 30 days after receiving the Amended CRA, whichever is later, the Class Member will be deemed to have accepted DuPont's resolution.

- b. Settlement Class Members who have signed CRAs and who wish to utilize the Appeal Process for any future warranty claims, rather than the dispute resolution system set forth in their CRAs, must submit a Notice of Intent to File an Appeal (as set forth in Exhibit 29) to the Claims Administrator postmarked by the Claims Deadline. The Settlement Class Members' appeals for warranty claims will not be heard until the Panel is convened after this Agreement is Final.
- c. Settlement Class Members that have signed CRAs and who do not submit a Notice of Intent to File an Appeal to the Claims Administrator by the Claims Deadline shall be bound by the alternative dispute resolution mechanisms set forth in their signed CRAs.
- d. Reassessment. After receiving an objection from a Class 1 or Class 3 Member, DuPont may elect to reassess the property of such Settlement Class Member, including performing a site revisit should DuPont so choose. If DuPont elects to perform such a reassessment, DuPont reserves the right to use any tree evaluation or measurement observed during the reassessment (pursuant to the requirements of Exhibits 19 and 20) to recalculate the compensation offered, regardless of whether that tree was a subject of the objection and regardless of whether the reassessment reduces the compensation provided. If an Amended Claim Resolution Agreement is provided to the Settlement Class Member, the Amended Claim Resolution Agreement shall be the

operative assessment of the Settlement Class Member's property from that date. The Settlement Class Member will need to determine whether to 1) accept the Amended Claim Resolution Agreement offered by DuPont and receive the compensation outlined therein; 2) participate in the Settlement, raise an appeal with the Panel after this Agreement is Final, and have compensation paid after the Panel ruling; or 3) opt-out by the Opt-Out Deadline, if such deadline has not passed. If a Settlement Class Member receives a ruling from DuPont concerning his/her/its objection and does not provide notice to DuPont selecting one of these three options within 30 days after the Settlement Class Member receives notice that the Agreement has become Final or 30 days after the Settlement Class Member receives his, her, or its proposed CRA under the Settlement, whichever is later, the Settlement Class Member will be deemed to have accepted DuPont's Amended Claim Resolution Agreement.

6. Should this Settlement not become Final, Settlement Class Members who have signed CRAs will be bound by the terms of their CRAs.

E. No Duplicate Recovery and Membership in Multiple Classes

Under no circumstances shall a Settlement Class Member be entitled under this Agreement to receive duplicative recovery for the same alleged injury, damages, or for any other compensation for which he, she, it, or a different Settlement Class Member or Opt-Out has already been compensated. As an example, multiple Class 1 or 3 Members may not recover for alleged injury to the same property.

In the event that a Settlement Class Member receives a payment from a third party, such as an insurance carrier or LCO, that payment will be deducted from any compensation awarded for that property under the Imprelis[®] Claim Resolution Process and this Settlement. If that third-party payment exceeds the compensation provided under the Imprelis[®] Claim Resolution Process, the Settlement Class Member will not receive any additional compensation beyond the warranty.

The recovery offered to Class 1 and Class 3 Members described in Section III.C.1 can only be awarded to the current, authorized owner who holds title to the property. Former property owners may submit a claim for reimbursement of the cost of tree removal if the former property owner paid for or otherwise arranged for the removal of trees on the property. In this instance, the former property owner may receive the additional payment of 15 percent calculated on the total compensation allowed for tree removal. If tree removal costs are awarded to a former owner, an amount equivalent to the tree removal costs will be deducted from the current owner's recovery. The current owner will receive the additional payment of 15 percent calculated on the total amount of the current owner's recovery minus the tree removal payment provided to the former owner. Current owners of property for which a recovery award has already been issued to a previous owner may submit claims for any new damage as warranty claims.

A person or entity may be a member of more than one class, such as a LCO that applied Imprelis[®] to its property and also other properties and properly documented tree impact on such properties. Such a person or entity is a member of more than one class and may receive the benefits of such multiple class membership. However, the same prohibitions on duplicative recovery in paragraph E above apply in all circumstances to any such Class Members who are members of multiple classes.

F. Motion for Preliminary Approval

Concurrent with submission of this Agreement for the MDL Court's consideration, Interim Co-Lead Counsel and Liaison Counsel shall submit to the MDL Court a motion for preliminary approval of the Settlement. The motion shall request entry of a Preliminary Approval Order in the proposed form set forth in Exhibit 8.

G. Stay and Resumption of Proceedings

The Parties shall file a joint request, contemporaneous with the filing of the motion for preliminary approval, for a stay of all proceedings in the MDL Actions as related to the Releasees, and any other proceedings asserting any of the Released Claims, other than proceedings in this MDL Court arising out of and relating to this Agreement. In the event the MDL Court does not give Final Approval to this Agreement, the Effective Date does not occur, or this Agreement is otherwise terminated, all stayed proceedings shall resume in a reasonable manner approved by the MDL Court.

H. Entry of Final Judgment

If the MDL Court gives Final Approval to this Agreement following the Final Fairness Hearing, counsel for the Parties shall request that the MDL Court enter a Final Approval Order, including the Court's express determination under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that separate judgments with respect to all claims by Settlement Class Members of Classes 1 and 3 be deemed as final judgments and that all claims with respect to Class 2 except the carved out claims be deemed as final judgments.

I. Effective Date

This Agreement shall be effective on the first date after all of the following events have occurred:

1. Entry of the Preliminary Approval Order

2. Final Approval of this Agreement by the MDL Court, following notice to Settlement Class Members and a Final Fairness Hearing, in accordance with Fed. R. Civ. P. 23;
3. Entry of the Final Approval Order; and
4. The Final Approval becomes Final after any appeal period has run.

J. Public Statements

The parties agree that no public statements will be made by either party about this Agreement prior to the execution of the Agreement. Settlement Class Counsel agrees to seek prior approval from DuPont regarding any press releases, notices, or public statements about DuPont or Imprelis[®], aside from those that describe the Settlement. Approval of such press releases, notices or any other public statements shall not be unreasonably withheld. Nothing in this provision will prevent Settlement Class Counsel from describing their role in this litigation or from communicating privately with Class Members in the course of giving legal advice regarding the terms of the Settlement or otherwise in the course of their representation of the Classes. Settlement Class Counsel will provide Counsel for DuPont (as identified in Section IV.D) at least two business days of notice of any public filing or statement regarding DuPont or Imprelis[®], with the exception of those that describe the Settlement.

K. CAFA Notices

Within ten (10) days of submission of this Agreement to the Court, DuPont, with the aid of the Claims Administrator, will serve notices of the Settlement on State and Federal regulatory authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notices”). DuPont will simultaneously serve copies of the CAFA Notices on Settlement Class

Counsel. In the event that a state or federal official raises concerns about the Settlement, the Parties agree to work together in good faith to resolve those concerns.

L. Work by Agents and Consultants

From the date of this Agreement forward, Deloitte Financial Advisory Services LLP (“Deloitte”), Stericycle Inc., The Davey Tree Expert Company, and Epiq Systems (“Epiq”), and other agents, counsel, and consultants of DuPont will continue to carry out the Imprelis[®] Claim Resolution Process. DuPont will be responsible for all costs of its agents, counsel, and consultants, and will retain the discretion to adjust the roles and identity of agents, counsel, and consultants as needed, subject to the provisions of this Agreement. In the circumstance where Settlement Class Members or counsel for Settlement Class Members have indicated that a Settlement Class Member is represented by separate counsel, DuPont, and its agents, counsel, and consultants will take appropriate steps to communicate with that separate counsel about the subject of the representation, unless counsel for DuPont has the consent of Settlement Class Member’s counsel or is authorized to do so by law or court order. The communications of DuPont, and its agents, counsel, and consultants with Class Members will be limited to the administration, implementation, and resolution of Class Members’ claims. In circumstances where Settlement Class Members have not indicated that they are represented by separate counsel, DuPont and its agents, counsel, and consultants may communicate directly with those Settlement Class Members.

M. Motion for Final Approval of the Settlement

Settlement Class Counsel shall file their Motion for Final Approval of the Settlement, together with a declaration from the Claims Administrator regarding completion of the notice program, by the Motion for Final Approval Deadline. Settlement Class Counsel shall file their Fee and Expense Application at this same time or as otherwise ordered by the Court.

IV. CLAIMS ADMINISTRATION

A. Claims Administrator/Claims Office

The Claims Administrator may appoint as many claims officers, experts, and/or advisors as are reasonably necessary to carry out the duties of the Claims Office expeditiously. The Claims Office procedures shall be subject to MDL Court approval and under the continuing jurisdiction of the MDL Court. The Claims Office shall be responsible for disseminating information to Settlement Class Members concerning settlement procedures, among other ways, by establishing a toll-free telephone number. Settlement Class Counsel, DuPont, and their respective agents and consultants may also disseminate information about the Settlement Claim Process and will make reasonable efforts to use standard and approved information. In addition, the Claims Office shall assist the Parties in processing and tabulating opt-out requests and shall receive all notices and documentation from Opt-Outs. DuPont, at its cost and expense, may audit the work of the Claims Administrator and, upon motion to the Court, may seek relief from payment of any Claims Administrator fees or expenses that were not reasonably necessary to carry out the tasks required under this Agreement, or request replacement of the Claims Administrator. Under no circumstances shall Settlement Class Counsel or the Class be responsible for payment of any expenses required to be paid by DuPont under the terms of this Agreement.

B. Notice

The class notice program shall be in accordance with Fed. R. Civ. P. 23 and subject to Court approval.

1. Upon entry of a Preliminary Approval Order, DuPont will advance the Notice Fund for the cost of notice, as set forth in Exhibit 7, into a Joint Bank Account from which funds can only be disbursed upon a request

signed by authorized representatives for both Parties. Thereafter Settlement Class Counsel, in accordance with Fed. R. Civ. P. 23 and the Preliminary Approval Order, shall provide all Settlement Class Members who can be identified by reasonable means with the best notice practicable under the circumstances, in substantially the forms attached hereto as Exhibits 5, 6 and 9, or as otherwise ordered by the MDL Court. Such notice shall include publication on the Settlement Website and additional publication and other notice as set forth in the Notice Plan in Exhibit 7.

2. As directed by the Preliminary Approval Order, Settlement Class Counsel, through the Claims Administrator, shall establish and maintain the Settlement Website, at which the Long-Form Notice, substantially in the form of Exhibits 5 and 6, shall be posted to provide notice to the Settlement Classes of the proposed Settlement. Settlement Class Counsel shall notify DuPont's counsel of the date that Notice will be issued to the Settlement Classes at least three (3) business days prior to the date of issuance.
3. Settlement Class Counsel, through the Claims Administrator, also shall cause the Publication Notice, in substantially the same form as Exhibit 9, to be published to the Settlement Classes as directed by the Preliminary Approval Order.
4. All costs of notice to the Settlement Classes, as set forth in Exhibit 7, shall be borne by DuPont.

5. All notice contemplated under this Agreement and the Notice Plan shall be completed by the time set forth in Section IV.F, unless otherwise ordered by the Court.

C. Opting Out of the Class

Each Class Member may, at his, her, or its option, elect to opt-out of the Settlement. Any Class Member who wishes to opt-out of the Settlement must do so, in writing, by mailing a request for exclusion to the Claims Administrator. Any such request must be sent to the Claims Administrator and postmarked by the Opt-Out Deadline. The request to opt-out must be signed by each Class Member seeking to opt-out and must set out the Class Member's first and last names, valid mailing address, functioning telephone number, and (except in the case of a Class 2 Member requesting to opt-out) address of the property allegedly impacted by Imprelis[®]. All requests to opt-out that fail to satisfy the requirements of this section, as well as any additional requirements that the Court may impose, shall not be effective. No class or mass opt-outs are permitted under this Agreement. Any Class Member who chooses to opt-out of the Settlement may rescind or revoke such decision by submitting a written revocation to the Claims Administrator. Any such revocation must be postmarked by the Opt-Out Deadline. Any Class Member who does not properly and timely submit a request for exclusion as required herein shall be deemed to have waived all rights to opt-out and shall be deemed a member of the applicable Settlement Class for all purposes under this Agreement. The Claims Administrator shall provide Interim Co-Lead Counsel and Liaison Counsel, DuPont, and the Court with the Opt-Out List within five (5) days of the Opt-Out Deadline.

Initial CRAs require that property owners opt-out of a class action if the claims in the class action fall within the scope of the release contained in the Initial CRA. *See* Exhibit 1.

Under the terms of this Agreement, property owners who have signed and executed an Initial CRA may participate in this Settlement.

D. Objecting to the Settlement

Any Class Member may object to the fairness, reasonableness, or adequacy of the proposed Settlement. Each Class Member who wishes to object to any term of the Settlement must do so, in writing, by filing a written objection with the Clerk of the Court and mailing it to the Parties' respective counsel at the addresses set forth below:

<i>Clerk of Court</i>	<i>Counsel for Plaintiffs:</i>	<i>Counsel for DuPont:</i>
Clerk of the U.S. District Court Eastern District of Pennsylvania 601 Market Street, Room 2609, Philadelphia, PA 19106-1797	Hollis Salzman, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005	Adam Hoeflich, Esq. Bartlit Beck Herman Palenchar & Scott LLP Courthouse Place 54 West Hubbard Street, Suite 300 Chicago, IL 60654

Any such objection must be filed with the Clerk of the Court and postmarked by the Parties' respective counsel by the Objection Filing Deadline. Any such objection must (a) attach copies of any materials that will be submitted to the Court or presented at the Final Approval hearing; (b) be signed by the Class Member or his/her/its counsel; (c) aver under penalty of perjury that the objector is a Class Member; and (d) clearly state in detail (i) the legal and factual ground(s) for the objection, (ii) the Class Member's name, address and telephone number, and (except in the case of a Class 2 Member objecting) address of the property allegedly impacted by Imprelis[®], and (iii) if represented by counsel, such counsel's name, address and telephone number. Any objection that fails to satisfy the requirements of this Section, or that is not properly and timely submitted, may be deemed ineffective, will be deemed by the Parties to have been waived, and the Parties will argue that the Class Member asserting such objection shall not be heard at the Final Fairness Hearing nor be considered by the Court and shall be bound by the final determination of the Court. Only Class Members may object to the Settlement. Persons or

entities who opt-out of the Settlement may not object to the Settlement. Any party may respond to any objection by the date set forth in Section IV.F.

E. Requests to Appear at Final Approval Hearing

Any Settlement Class Member or their counsel who wish to appear at the Final Fairness Hearing and be heard must make such request by notifying the Court and the Parties' respective counsel at the addresses set forth in this Agreement, subject to discretion of the Court. Any such request must be filed with the Clerk of the Court and postmarked no later than the date set forth in Section IV.F, and must state the name, address and telephone number of the Settlement Class Member, as well as the name, address and telephone number of the person who will appear on his or her behalf. Any request for appearance that fails to satisfy the requirements of this section, or that has otherwise not been properly or timely submitted, may be deemed ineffective, and shall be deemed to constitute a waiver of such Settlement Class Member's rights to appear and to comment on the Settlement at the Final Fairness Hearing. Only Settlement Class Members or their counsel may request to appear and be heard at the Final Fairness Hearing. Persons or entities who opt-out may not request to appear and be heard at the Final Fairness Hearing.

F. Deadlines

Unless otherwise ordered by the Court, the following deadlines will apply. In the case of a discrepancy between the table below and the text of this Agreement, the dates in the following table control:

Timeframe	Action
10 days after Agreement Submitted to Court for Preliminary Approval Order	CAFA Notice Deadline (III.K)
40 days after Preliminary Approval	First Issuance of Direct Notice
95 days after First Issuance of Notice	Opt-Out Deadline (IV.C) Notice Completion Date (IV.B.5) Claims Deadline (II.E), (III.D.5) Request to Appear Deadline (IV.E)
5 days after Opt-Out Deadline	Claims Administrator To Provide Opt-Out List to DuPont (IV.C)
21 days after receipt of Opt-Out List	DuPont Termination Deadline (IX.A)
14 days after DuPont Termination Deadline	Motion for Final Approval Deadline (III.M) Fee and Expense Application Deadline (III.M), (VII.B)
14 days after Motion for Final Approval Deadline	Objection Filing Deadline (IV.D)
14 days after Objection Filing Deadline	Objection Response Deadline (IV.D)
30 days after Receipt of Notice Becoming Final or 30 days after Receipt of CRA, whichever is later	Deadline for Filing a Notice of Intent to Appeal (III.C.1.a.xii).

G. Retention of Records

The Claims Administrator, DuPont, Deloitte, and Epiq shall retain all Inspection Request Forms and Settlement Claim Forms for a period of five (5) years from the Effective Date of the Agreement.

H. Notice Fund

Upon preliminary approval of this Settlement by the MDL Court, DuPont shall establish a Notice Fund to provide for the costs of Notice. DuPont shall have the right to audit amounts paid from the Joint Bank Account and Notice Fund. If this Agreement is terminated pursuant to Section IX, then any balance of the Joint Bank Account will be returned to DuPont. Any funds

remaining in the Joint Bank Account after completion of the notice program shall revert to DuPont.

V. EXCLUSIVE REMEDY/DISMISSAL OF CLAIMS/JURISDICTION

A. Limitation on Releasee Liability

No Releasee shall be subject to liability or expense of any kind to any Settlement Class Member related to the Released Claims except as provided in this Agreement.

B. Dismissal of Claims

The Parties agree that upon the Effective Date of this Agreement, all Released Claims shall be dismissed with prejudice in accordance with the Final Approval Order entered by the MDL Court.

C. Jurisdiction

The MDL Court shall retain exclusive and continuing jurisdiction over the Complaint, the Parties, the Settlement, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations.

VI. RELEASES AND RESERVATIONS

A. Released Claims

Upon the Effective Date of this Agreement, and in consideration of the provisions of the Agreement, the Releasees shall be released and forever discharged by the Class Releasors from any and all claims arising from or relating to Imprelis[®], including but not limited to those that were, could have been, or could be asserted by the Class Releasors, subject only to the express exceptions listed herein (the “Released Claims”). The Released Claims shall include, but are not limited to, any and all claims, causes of action, demands, actions, suits, rights, obligations, controversies or the like, known or unknown, under state consumer fraud, warranty, or unjust

enrichment laws. The only claims excluded from this Release shall be that 1) Class 1, Class 2, or Class 3 Members will not release claims for personal injury, wrongful death, and any environmental claims not related to claimed injuries to Class Member's property and vegetation; and 2) Class 2 Members will not release any right to seek to recover from DuPont for claims of lost profits for business interruption, and/or suits brought against Class 2 Members arising out of their work relating to the application of Imprelis[®] brought by those who have opted-out of this Agreement.

All Class Releasors covenant and agree that they shall not hereafter seek to establish liability against any Releasees based, in whole or in part, on any of the Released Claims. Each Class Releasor expressly waives and fully, finally, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims without regard to the subsequent discovery or existence of different or additional facts.

IN ADDITION, EACH CLASS RELEASOR HEREBY EXPRESSLY WAIVES AND RELEASES, UPON THIS AGREEMENT BECOMING EFFECTIVE, ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY ANY STATUTE, LAW OR PRINCIPLE OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO § 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS:

SECTION 1542. GENERAL RELEASE; EXTENT. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

Each Class Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of this Paragraph VI.A, but each Class Releasor hereby expressly waives and fully, finally, and

forever settles and releases, upon the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims with respect to the subject matter of this Paragraph VI.A whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Class Releasor also hereby expressly waives and fully, finally, and forever settles and releases any and all Released Claims it may have against the Releasees under § 17200, *et seq.*, of the California Business and Professions Code.

B. Reservation of Claims and Rights

1. Released Claims shall not include (a) any claim against any person or entity that is not a Releasee or (b) any claim arising out of this Agreement.
2. The Parties agree that this Agreement, whether or not the Effective Date occurs, and any and all negotiations, documents, and discussions associated with it shall be without prejudice to the rights of any Party (other than those compromised herein); shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by any of the Releasees, or of the truth of any of the claims or allegations contained in any complaint or pleading, whether in the MDL Class Actions or otherwise. The Parties expressly reserve all of their rights if this Agreement fails to become Final and effective substantially in accordance with its terms.
3. This means, among other things and without limitation, that if the MDL Court does not certify the Settlement Classes or this Agreement is not approved by the MDL Court substantially in accordance with its terms and does not become subject to a Final Approval order following such

approval, or Final Approval does not become Final, then no class will be deemed certified by or as a result of this Agreement, and the MDL Action for all purposes will revert to its status as of the date before the execution of this Agreement and all stayed proceedings shall resume in a reasonable manner approved by the MDL Court. In such event, DuPont will not be deemed to have consented to certification of the Settlement Classes, and will retain all rights to oppose class certification, including but not limited to certification of the identical classes provided for herein.

VII. ADMINISTRATIVE EXPENSES AND ATTORNEYS' FEES

A. Administrative Expenses

The Releasees shall not be liable for any litigation expenses of the Class Actions except as expressly set forth in this Agreement and as approved by the Court.

B. Attorneys' Fees, Costs, and Expenses and Plaintiff Service Awards

As part of the Settlement, Settlement Class Counsel shall make a Fee and Expense Application to the MDL Court for a Fee and Expense Award. Settlement Class Counsel agree not to seek, and DuPont shall not be obligated to pay, attorneys' fees and expenses in conjunction with this Settlement in excess of seven million dollars (\$7,000,000), consisting of six million five hundred thousand dollars (\$6,500,000) in fees and five hundred thousand dollars (\$500,000) in costs. DuPont shall not oppose a Fee and Expense Application up to a maximum of \$6,500,000 for fees and \$500,000 for costs.

DuPont's payment of the Fee and Expense Award in conjunction with this Settlement is separate from and in addition to the other relief afforded the Settlement Class Members under this Agreement. The Court's Fee and Expense Award, as set forth above, shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the

Settlement, but denies, in whole or in part, the Fee and Expense Application by Settlement Class Counsel, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement, no Fee and Expense Award shall be paid. All Fees, Costs, and Expenses in the Fee and Expense Award shall be allocated by Interim Co-Lead Counsel, at their sole discretion among Settlement Class Counsel. DuPont's obligations relating to the above-referenced attorneys' fees and expenses in conjunction with the Settlement is conditioned on Court approval of the Fee and Expense Application and shall be limited to the Fee and Expense Award.

As part of the Fee and Expense Application, Settlement Class Counsel will petition the Court for, and DuPont will not oppose, Plaintiff Service Awards for the named plaintiffs in the Complaint in a total amount of \$1,500 for each individual property owner named as a plaintiff in the Complaint and \$2,500 for each entity (including but not limited to LCOs, golf course, and multi-owner or multi-tenant commercial properties, and/or the business entities that own or comprise each of them) named as a plaintiff in the Complaint. DuPont's obligations relating to the above-referenced Plaintiff Service Awards in conjunction with the Settlement is conditioned on Court approval of such Plaintiff Service Awards and the Agreement becoming Final.

DuPont will pay the Fee and Expense Award in conjunction with the Agreement in full within 10 days of Final Approval. In the event that Final Approval of this Agreement is reversed or modified on appeal or this Agreement otherwise does not become Final, or in the event that any award of attorneys' fees and costs is modified or vacated on appeal, Settlement Class Counsel shall remit the attorneys' fees and costs to DuPont as set forth in the Parties' Stipulated Undertaking Re: Attorneys' Fees and Costs, the agreed upon and executed form of which will be filed with the Court.

VIII. MISCELLANEOUS PROVISIONS

A. Best Efforts

The Parties agree to use their best efforts, including all steps required by this Agreement and other efforts that may be necessary or appropriate, by order of the MDL Court or otherwise, to carry out the terms of this Agreement.

B. Good Faith

The Parties acknowledge that the litigation was prosecuted and defended in good faith by Settlement Class Counsel and Counsel for DuPont and that no Party will assert a violation of Rule 11 of the Federal Rules of Civil Procedure or any similar provision.

C. No Admission

Nothing in this Agreement, including any of its provisions, any statement made or document related to or filed in connection herewith, or the Parties' willingness to enter into this Agreement, shall be construed as an admission as to the propriety or impropriety of the litigation in this matter or any other litigation, any liability or wrongdoing of any of the Releasees, or of the merit or lack thereof of any allegations in any complaint against any Releasees or of any potential or asserted defenses of any Releasees; and neither the Agreement nor any statement made or document related to or filed in connection therewith shall be admissible in evidence for any such purpose in any proceeding.

D. Enforcement

Notwithstanding the preceding Paragraph, and only if this Settlement is finally approved by the MDL Court and becomes Final, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted against the Releasees in such capacity with respect to any of the Released Claims, and may be filed, offered, received into evidence, and otherwise used for such defense. This

Agreement may also be used in connection with the Parties' application for approval or enforcement of this Agreement and all proceedings incident thereto, including requests for attorneys' fees, costs, disbursements and compensation to the Settlement Classes, and any disputes arising from this Agreement.

E. Authorization to Enter Agreement

The undersigned representatives of DuPont represent that they are fully authorized to enter into and execute this Agreement on behalf of DuPont. Settlement Class Counsel represent that they are fully authorized to conduct settlement negotiations with Counsel for DuPont on behalf of Class Representatives and Class Members and to enter into and execute this Agreement on their behalf, subject to approval by the MDL Court pursuant to Fed. R. Civ. P. 23(e).

F. No Party Is the Drafter

None of the Parties to this Agreement shall be considered the drafter of this Agreement or any included provision for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter.

G. Choice of Law

This Agreement shall be governed by and interpreted according to the substantive laws of the state of Delaware without regard to its choice of law or conflict of laws principles. The MDL Court shall maintain continuing jurisdiction over this matter in any proceeding to interpret or enforce the terms of this Settlement.

H. Time for Compliance

If the date for performance of any act required by or under this Settlement Agreement is due to be performed on or by a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

I. Amendment or Waiver

This Agreement shall not be modified in any respect except by a writing executed by all Parties to this Agreement. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with this Agreement.

J. Execution in Counterparts

This Agreement may be executed in counterparts. Facsimile or PDF signatures shall be valid signatures as of the date thereof.

K. Integrated Agreement

This Agreement, including its Exhibits, contains an entire, complete, and integrated statement of the terms agreed to by and between the Parties.

L. Construction

This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely the Released Claims with respect to the Releasees through this Agreement, subject to the terms and conditions herein.

IX. TERMINATION OF THIS AGREEMENT

A. Termination

This Agreement shall be terminated, without notice, if the MDL Court declines to enter a Preliminary Approval Order or to grant Final Approval, or if such approval order does not become Final (as a result of reversal on appeal or otherwise). DuPont's willingness to enter into the Agreement is conditioned upon the Agreement's providing adequate protections that the Settlement will resolve substantially all of the Settlement Class Members' claims against DuPont. DuPont retains the right to withdraw from and terminate the Agreement if, in its sole

discretion, DuPont believes that the number of Opt-Outs is unsatisfactory to DuPont. If DuPont concludes that the number of Opt-Outs is unsatisfactory, it will exercise its right to terminate this Agreement, if at all, by the DuPont Termination Deadline as set forth in Section IV.F.

B. Effect of Termination

In the event of notice of termination by DuPont, this Agreement shall be of no force or effect; the Parties shall request the MDL Court to vacate any order certifying the Settlement Classes and all stayed proceedings shall resume in a reasonable manner approved by the MDL Court; and the remaining portion of any monies advanced by DuPont for class notice and related expenses, together with any accrued interest, if any, shall be refunded to DuPont.

C. Additional Time to Submit CRA or Complete Claim

Should this Agreement not become Final, DuPont will provide a 60 day period in which those who have submitted a Claim Form or an Inspection Request Form, but have not executed CRAs, may execute their CRAs and provide them to DuPont. DuPont will provide Notice, which can be in the form of a postcard or letter, informing such persons of the termination of the Settlement and the deadline for submitting signed CRAs. At such time and at its sole discretion, DuPont may elect to continue the claim process for those who have submitted a Claim Form or an Inspection Request Form, but have not yet received their CRA.

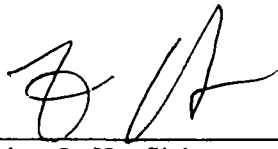
IN WITNESS WHEREOF, the Parties hereto, by and through their fully authorized representatives, have executed this Agreement as of October 19, 2012.


Signed:

E. I. du Pont de Nemours & Company

By: 

Its: outside counsel


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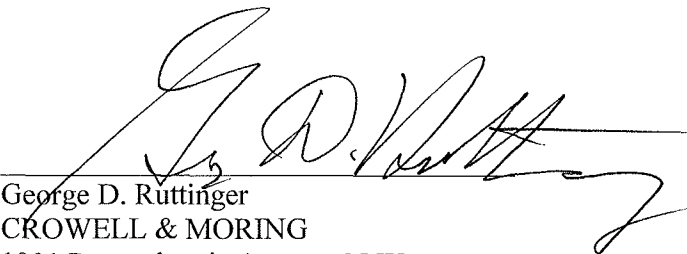
Signed:

E. I. du Pont de Nemours & Company

By: _____

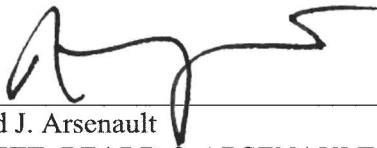
Its: _____

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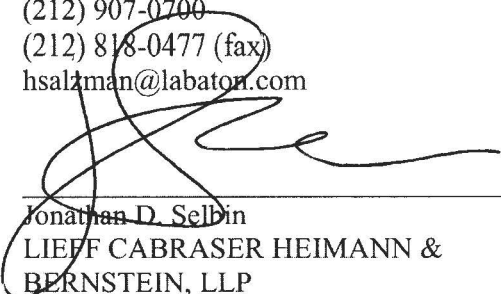
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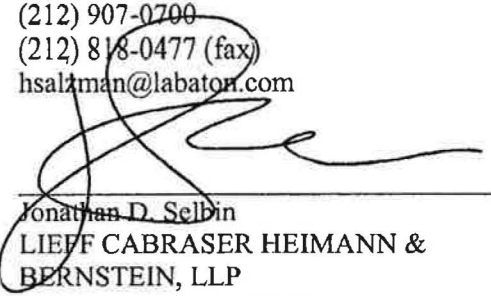


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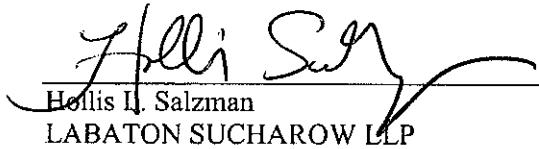
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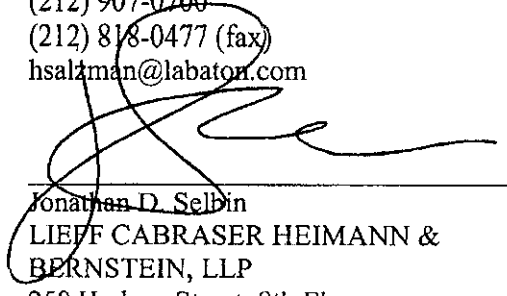
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