

**August 1, 2019**

**From: Paul Kende and Jim Odle**

**To: NRLN DuPont Retirees Chapter Members**

**Subject: Class Action Complaint**

As some of you may know, a Class Action Complaint was filed on July 3 in the Northern District of California Federal Court, by 4 DuPont pensioners. The proposed Class Action names Corteva, Dow, DowDuPont, E.I DuPont, as well as top management and the Pension Plan itself, as defendants. The Complaint asks the Court to order:

- Certification for Class Action to sue the Defendants for violations of ERISA laws
- Full funding for the Pension Plan
- Defendants to remain part of the controlled group of the Plan and/or undoing the transfer of Historical DuPont and the Plan assets and liabilities to Corteva
- Disgorgement of profits, statutory penalties for deceptive funding notices and attorneys fees

Corporate Communication has stated that the Company believes the Complaint is without merit, and that it will vigorously defend itself.

The link below leads to the 68-page court filing. The case details will emerge only if and when the court would allow for discovery of the facts. We cannot really judge the legal technicalities and merits of this Class Action Complaint; however, since the Action seeks to represent all Plan Participants, it is important to all of us. The purpose of this note is to make you aware of this Action and offer some relevant comments and context. We will provide more information as we learn more.

1. Historical E.I. DuPont de Nemours & Co. is now a subsidiary of Corteva and continues as the Sponsor of the DuPont Pension Plan. The Class Action Complaint claims that Historical DuPont, stripped of all assets, is unable to carry out its responsibilities as the Sponsor of the Plan. However, we believe that Corteva, as the parent company of E.I. DuPont, has full liability and the “real” fiduciary responsibility over the pension Trust Fund’s assets and obligations (see link in References to Corteva’s Retiree website for an overarching corporate statement, reference to Ed Breen’s Nov 1, 2018 letter to all Plan participants, which declared Corteva’s responsibility for retiree benefits and their commitment to fulfill all pension obligations, as well as information on the full range of retiree benefits).
2. The Complaint also claims that the allocation of the Pension Plan to the Corteva spinoff was a prohibited transaction under ERISA. The PBGC was aware of the merger/separation plan all along and probably could have intervened if it were not legal. Although the PBGC’s power to prevent corporate actions is limited, they do have influence and leverage with Plan sponsors.
3. The Complaint states that the Pension Plan is \$5.9 billion underfunded, based on the non-MAP-21 calculation shown in the supplement to the last Annual Funding Notice. While technically correct, this ignores the \$4 billion 2017/18 contribution, most of which went into the Credit Balance. Credit Balances are not recognized by MAP and non-MAP

Funding Level calculations, but they are part of the Fair Market Value (FMV) asset valuations, also stated in the AFN reports. On this basis, the 2018 year-end FMV Funding Level rose to 88.3% (determined by FMV Assets/liabilities). As the most timely and most accurate valuation, we believe FMV-based Funding Level is the most appropriate indicator by which to judge the financial health of the Plan. For a fuller discussion of the Plan's Financial History, its interpretation and its outlook, please refer to Paul Kende's May 13 email to DRC members, which is still posted on our webpage (the population graph in that note has been shifted by one year for correct timing alignment with the rest of the financial data).

4. The Complaint also claims that if Corteva were to go bankrupt, the resources of the other independent spinoff, the "new DuPont", could not be tapped for supporting the Pension Plan, and this puts the Pension Plan at risk. The financial insulation of Corteva is probably correct, but the assertion of high risk seems exaggerated, because Corteva is considered to be a high performance operation and was set up to thrive as a business, with strong balance sheet, high credit rating, strong competitive position, and starting out with a significantly higher Pension Plan Funding Level. Also, as a business focused on seeds and agrichemicals, Corteva is less likely to be further split up than the other spinoff (the "new DuPont"), which is still a conglomerate comprised of four different businesses. We believe the risk of Corteva going bankrupt, requiring PBGC to take the Plan over, is very low. In the unlikely event of bankruptcy, PBGC guarantees would cover most Participants at 100%, though some younger, but highly compensated retirees, might suffer some pay loss, due to PBGC payment caps (see link below for maximum PBGC payments determined by law).

Naturally, we cannot predict what the court will do. However, as a 2016 reference point, a Circuit Court of Appeals has dismissed (for the second time) a pension-related class-action lawsuit against Verizon, because the plaintiffs did not demonstrate actual harm (i.e. pay loss) – in other words, increased risk and Participants' fear of loss was not deemed actionable.

## References

- Class Action Complaint: <https://drive.google.com/viewerng/viewer?url=https://storage.googleapis.com/delawarebusinessnow-cdn/2019/07/1-main.pdf>
- Corteva retiree website: <https://www.cortevabenefits.com/former.html>
- PBGC Max Guaranteed payments: <https://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee>

Your questions and comments are always welcome - paul.kende@gmail.com and odlejk@gmail.com