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U.S. District Court
District of New Jersey [LIVE]

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Case Name: WILLIAMS et al v. BASF CATALYSTS LLC et al

Case Number: [2:11-cv-01754-BRM-AME](#)

Filer: KIMBERLEE WILLIAMS

Document Number: [638](#)

Docket Text:

MOTION to Certify Class and Approval of Class Action Settlement by KIMBERLEE WILLIAMS. (Attachments: # (1) Brief, # (2) Declaration, # (3) Text of Proposed Order, # (4) Exhibit A, # (5) Exhibit B, # (6) Exhibit C, # (7) Exhibit D, # (8) Exhibit E, # (9) Exhibit F, # (10) Exhibit G, # (11) Exhibit H, # (12) Exhibit I, # (13) Exhibit J, # (14) Exhibit K, # (15) Exhibit L, # (16) Exhibit M, # (17) Exhibit N, # (18) Exhibit O, # (19) Exhibit Q, # (20) Exhibit R, # (21) Exhibit S, # (22) Exhibit T, # (23) Exhibit U, # (24) Exhibit V, # (25) Exhibit W, # (26) Exhibit X, # (27) Exhibit Y, # (28) Exhibit Z, # (29) Exhibit AA, # (30) Exhibit BB, # (31) Exhibit CC, # (32) Exhibit DD, # (33) Exhibit P)(PLACITELLA, CHRISTOPHER)

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Document description:Text of Proposed Order

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Document description:Exhibit N

Original filename:n/a

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Original filename:n/a

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Original filename:n/a

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Document description:Exhibit U

Original filename:n/a

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Original filename:n/a

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Document description:Exhibit W

Original filename:n/a

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Document description:Exhibit X

Original filename:n/a

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Original filename:n/a

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Original filename:n/a

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Document description:Exhibit P

Original filename:n/a

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KIMBERLEE WILLIAMS, *et al.*

Plaintiffs,

vs.

BASF CATALYSTS LLC, *et al.*

Defendants.

No. 2:11-cv-01754 (ES) (JAD)

CIVIL ACTION

**MOTION FOR FINAL APPROVAL OF THE CLASS ACTION
SETTLEMENT AGREEMENT AND CLASS
CERTIFICATION**

Plaintiffs, through their counsel, Cohen, Placitella & Roth, P.C., move pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e), for the entry of the Proposed Final Approval Order. The proposed order seeks: (1) final approval of the Settlement Agreement; (2) certification of a Settlement Class; (3) appointment of Kimberlee Williams, Gayle Williams, Marilyn L. Holley, Sheila Ware, Donnette Wengerd, and Rosanne Chernick as representatives for the Class; (4) appointment of Christopher M. Placitella as Lead Class Counsel and Stewart L. Cohen, Harry M. Roth, Michael Coren, Robert L. Pratter, Eric S. Pasternack, Jared M. Placitella and the law firm of Cohen Placitella &

Roth, P.C., as Class Counsel; (5) approval of the proposed Plan of Distribution and authorization for the Settlement Administrator to disburse the Settlement Fund; (6) appointment of the Hon. Marina Corodemus, J.S.C. (Retired) to the position of Settlement Trustee and Special Master under Federal Rule of Civil Procedure 53; (7) appointment of Verus LLC as the Settlement Administrator; (8) appointment of Edgar C. Gentle, III, Esq. as the Lien Administrator; (9) award Class Counsel the full \$22.5 million in attorneys' fees and \$1.2 million¹ in reimbursable expenses that Defendants have agreed to pay over and separate from the \$72.5 million Settlement Fund; and (10) award the Class Representatives incentive awards of \$50,000 each for their contribution to achieving the Settlement.

¹ Class Counsel request an award of costs and litigation expenses incurred to date and for those to be incurred in the future in attending to the administration and completion of the Plan of Distribution in the aggregate sum of \$1,200,000, with the sum of \$1,041,094.46 being immediately payable and the balance placed in the Settlement's Cost Fund. Class Counsel request that applications for further disbursements shall be made to the Settlement Trustee/Special Master, who shall be authorized to determine and make awards from the reserved amount to Class Counsel. Any unused reserved funds shall be returned to Defendants in accord with the Settlement Agreement's Cost Fund provisions.

The terms of the Settlement are set forth in the Settlement Agreement dated March 13, 2020.

The relief sought in this Motion is supported by:

- a. Memorandum of Law in Support of Final Approval;
- b. Petition for Attorney's Fees, Reimbursement of Litigation Expenses and Costs, and Incentive Awards for the Class Representatives. ECF No. 628.
- c. Certification of Christopher M. Placitella, Esq., including the exhibits attached thereto.

WHEREFORE, Plaintiffs request that the Court enter the proposed Final Approval Order.

Respectfully Submitted,

COHEN, PLACITELLA & ROTH, P.C.

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Attorneys for Plaintiffs and the Putative Class

Dated: August 19, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KIMBERLEE WILLIAMS, et al.

Plaintiffs,

vs.

BASF CATALYSTS LLC, et al.

Defendants.

No. 2:11-cv-01754 (ES) (JAD)
CIVIL ACTION

**PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF FINAL APPROVAL OF THE CLASS
ACTION SETTLEMENT**

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Attorneys for Plaintiffs and the Class

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I. Introduction

On September 3, 2020, this Court preliminarily approved the Class Action Settlement between Plaintiffs and Defendants BASF Catalysts LLC (“BASF”) and Cahill Gordon & Reindel LLP (“Cahill”) (collectively “Defendants”). Since then, the Settlement Administrator, under the Plan of Distribution and the Preliminary Approval Order, (ECF No. 623), has approved the claims by 8,052 Settlement Class Members for compensation from the \$72.5 million Settlement Fund. Not one member of the Class has objected to the Settlement or submitted a valid opt-out. There has also been no objection from any federal or state officials that received notice of the Settlement as required by Class Action Fairness Act (CAFA), 28 U.S.C. § 1715(b). Informed by a decade of investigation, hard fought litigation, extensive discovery, and the overwhelmingly positive reaction of the Class to the Settlement, Class Counsel thus believe that this Settlement is fair, reasonable, and adequate, and should be granted final approval.

Under the Settlement Agreement, BASF and Cahill will establish a non-reversionary \$72.5 million settlement fund (“Settlement Fund”) to compensate members of the Settlement Class. Exhibit A.¹ In addition, BASF and Cahill agreed to pay up to \$3.5 million for the costs of providing the notice program to the

¹ Capitalized terms have the same meaning as in the parties’ Class Action Settlement Agreement.

proposed Settlement Class and for the administration of the claims submitted to the Settlement Fund.² Defendants have further agreed that, subject to Court approval, the six Representative Plaintiffs (“Representative Plaintiffs” or “Plaintiffs”) will be paid service awards from the Settlement Fund in an amount not to exceed \$50,000 each (\$300,000 in the aggregate). BASF and Cahill have also agreed to fund and to not oppose Class Counsel’s petition for attorneys’ fees and litigation expenses for the Court to award up to \$22.5 million and \$1.2 million, respectively. All told, the proposed Settlement provides a substantial benefit package of nearly \$100 Million to the Settlement Class Members in exchange for releasing Defendants along with the individual co-defendants named in the *Williams* Action, thereby ending the present litigation for all time.

With no opposition to the Settlement having been filed, Plaintiffs now seek final approval of the Class Action Settlement and certification of the Settlement Class. Plaintiffs also request that the Court give final approval to the Plan of Distribution (“Plan” or “POD”). Class Counsel further request that the Court approve Class Counsel’s unopposed and unobjected to Petition for payment of \$22.5 million in attorneys’ fees, reimbursement of \$1.2 million in litigation

² As outlined in this Motion, with claims administration having begun after entry of the Preliminary Approval Order, it is now largely completed.

expenses and costs,³ and the award of \$50,000 to each of the six Class Representatives for an aggregate of \$300,000 for their contribution to this litigation over the last decade in achieving this substantial recovery for the Settlement Class. ECF No. 628. The declaration of Lead Class Counsel, Christopher Placitella, being filed with this Memorandum, sets forth the history of this Action and the services performed by Class Counsel over the past decade. We add in this Memorandum supplemental information about Class Counsel's efforts since the filing of the original Fee Petition and ask that the Court now grant the Fee Petition.

II. Factual Background

This history of the litigation, and the underlying claims that gave rise to this Action were extensively described in Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement Agreement and Conditional Class Certification. ECF No. 621. Rather than burdening the Court with a detailed repetition of all the facts prompting this Action, Plaintiffs offer only a brief recitation here. In short, in 2009, Class Counsel obtained evidence which they believe contradicted the claims

³ Plaintiffs are requesting approval of the agreed upon \$1.2 million in litigation expenses and costs. To date, Plaintiffs' litigation expenses and costs are \$1,041,094.46. Plaintiffs request that the Court authorize payment of this amount to Class Counsel with the remainder being paid into and held in the Cost Fund so that Class Counsel has recourse for any additional expenses incurred during the Final Approval process and during the remaining administration of the Plan of Distribution. Disbursements should be subject to review and order of the Special Master.

made by Engelhard and its prior counsel in defending and gaining dismissal of thousands of asbestos injury and death lawsuits allegedly arising from exposure to Emtal Talc that had been filed against Engelhard (later acquired by BASF) from 1983 until 2009.

On March 28, 2011, five of the current six Representative Plaintiffs filed this Class Action Lawsuit. The sixth Representative Plaintiff, Mrs. Roseanne Chernick, joined in the matter when the First Amended Class Action Complaint (“FAC”) was filed on August 3, 2011, after Defendants filed several motions to dismiss. Plaintiffs filed the Second Amended Complaint (“SAC”) on July 16, 2015.

The SAC alleges that from 1984 to 2009, Engelhard and Cahill defended asbestos bodily injury cases in state and federal courts (“Underlying Lawsuits”) in part by (1) denying that Emtal Talc contained asbestos, (2) denying the existence of any evidence that it did, and (3) stating that no Engelhard employee had ever testified about the presence of asbestos in Emtal Talc. Plaintiffs allege that Engelhard and Cahill employed this defense for 25 years, allegedly resulting in thousands of dismissals, either voluntarily, by court order, or through Engelhard’s participation in nuisance-value group settlements with other talc defendants (including talc defendants whose products were known at the time to contain asbestos).

Defendants have vigorously denied these allegations. In addition to denying that they committed the alleged fraud or that Emtal Talc contained injurious amounts of asbestos, Defendants argue that the Underlying Lawsuits were settled or dismissed for a variety of legitimate reasons. For example, Defendants assert in their defense that many plaintiffs could not prove they were exposed to Emtal Talc; that some plaintiffs could not prove they suffered an asbestos-related injury; that some plaintiffs' claims were time-barred, and so on. Defendants have also argued that Plaintiffs in this action did not suffer monetary damages because many plaintiffs accepted similar settlement values from other talc defendants for whom plaintiffs had evidence of asbestos contamination and exposure.

The District Court granted Defendants' motion to dismiss the FAC. *Williams v. BASF Catalysts LLC*, No. 11-1754, 2012 U.S. Dist. LEXIS 175918 (D.N.J. Dec. 12, 2012). The Court ruled that Plaintiffs' fraud and fraudulent concealment claims were not actionable, mainly because New Jersey's litigation privilege immunized Defendants from tort liability for alleged misstatements made in the Underlying Lawsuits. The District Court further found that Plaintiffs failed to plead an actionable RICO claim, reasoning that the Underlying Lawsuits were personal injury claims and that Plaintiffs' requested relief would impermissibly undermine prior state court judgments in the Underlying Lawsuits. The Court also held that the FAC did not allege an actionable N.Y.J.L. § 487 claim.

Plaintiffs appealed the decision dismissing the FAC to the Third Circuit, which reversed the dismissal in part. The Third Circuit held that: (1) New Jersey's litigation privilege does not bar Plaintiffs' fraud and fraudulent concealment claims in view of what was alleged to have occurred; and (2) the FAC adequately alleged the elements of fraud and fraudulent concealment under New Jersey law. The Third Circuit also affirmed in part, upholding the District Court's decision to dismiss Plaintiffs' RICO claim.⁴ *Williams v. BASF Catalysts LLC*, 765 F.3d 306 (3d Cir. 2014).

Following the Third Circuit's remand, Plaintiffs filed the SAC against BASF as successor to Engelhard and Cahill for fraudulent concealment, fraud, and civil conspiracy under New Jersey law. The District Court denied Defendants' motions to dismiss the SAC and ordered the case to continue to discovery. *Williams v. BASF Catalysts LLC*, No. 11-1754, 2016 U.S. Dist. LEXIS 46273, *23-27 (D.N.J. Apr. 5, 2016). The Court appointed retired New Jersey Supreme Court Justice Roberto A. Rivera-Soto as a Special Discovery Master ("SDM") to expedite discovery and resolve discovery disputes. The SDM presided over and decided more than 50 discovery motions, as the parties engaged in what would become two

⁴ The Third Circuit also affirmed in part and reversed in part the District Court's opinion regarding justiciability of certain FAC's claims for relief, which are not germane to the Class Action Settlement.

years of extensive and hard-fought discovery. During this discovery phase, the parties also exchanged over 300 pieces of meet-and-confer correspondence, produced and reviewed hundreds of thousands of pages of documents and ESI equivalents, and completed 28 depositions. Exhibit B, ¶ 24.

Several disputes arose during discovery that significantly influenced the path of the litigation and ultimately contributed to its resolution. Detailed in the Motion for Preliminary Approval, we presently only summarize these issues for the Court. First, the parties vigorously disagreed about the extent, if any, to which Defendants were entitled to delve into the merits of the Underlying Lawsuits and discover plaintiffs' and their original attorneys' files and confidential attorney-client communications from those suits. Plaintiffs argued that the Defendants had forfeited the right to discovery regarding the Underlying Lawsuits and sought a protective order precluding that review.

The parties extensively briefed and argued the issue. The District Court rejected Plaintiffs' arguments, in part, regarding the scope of discovery and ruled that "exposition" of the Underlying Lawsuits was necessary. *Williams v. BASF Catalysts, LLC*, No. 11-1754, 2017 U.S. Dist. LEXIS 122053, *30, 33 (D.N.J. Aug. 3, 2017). To that end, the District Court ruled that the "scope of discovery will focus on the alleged wrongful conduct and any alleged harm following from that conduct" including "why Plaintiffs settled or dismissed their underlying

claims.” *Id.* at *31. Chief Judge Linares ruled that “[t]o fully explore this issue, Defendants will be entitled to discover what Plaintiffs and their counsel knew, and were told, and whether any knowledge, or lack thereof, contributed to Plaintiffs’ decisions on resolving the underlying case.” *Id.* That inquiry, the Court explained, permitted a waiver of Plaintiffs’ attorney-client privilege and therefore warranted review of the files and correspondence related to the Underlying Lawsuits. *Id.* at *32-33.

Second, in a motion filed on November 2, 2017, Plaintiffs sought to compel the production of BASF’s privileged documents under the crime-fraud exception. After considering the parties’ briefing, the SDM held multiple days of oral argument on the threshold inquiry of whether Plaintiffs made a *prima facie* showing that Defendants engaged in a crime or fraud. He eventually stated that he would like additional information concerning the scientific testing of Emtal talc and the mine it came from to help him decide the crime-fraud motion. Although Defendants’ first request for a “Science Day” had been denied without prejudice, the SDM ordered that the parties provide expert testimony concerning the testing record. Plaintiffs objected to the SDM’s order for a Science Day, sought an emergency stay, and appealed the order to the District Court. That appeal remained pending when, on June 26, 2018, Chief Judge Linares stayed this Action and

ordered the parties to continue settlement discussions before Magistrate Judge Dickson. ECF No. 602.

Third, the SDM ruled that certain internal testing documents BASF claimed as privileged were discoverable for various reasons. The Defendants appealed these rulings to the District Court. With appeals of all the parties pending, the District Court stayed the *Williams* Action in its entirety and ordered that the parties participate in mediation.

The parties engaged in four rounds of mediation prior to reaching the proposed Settlement. Again, the mediation efforts are detailed in the Plaintiffs' Preliminary Approval Motion but are outlined here as they demonstrate the scope and depth of the disputes between the parties and their efforts to assess and evaluate the litigation risks on both sides in arm's length, mediated settlement discussions.

Following the Third Circuit's decision reversing, in part, the dismissal of the Action, the parties participated in a mediation session before retired United States District Court Judge Layn R. Phillips in February 2015. Because the parties could not reach an agreement, active litigation resumed.

In 2016, the parties agreed to again pause the litigation and return to mediation before Judge Phillips. But with the parties again unable to reach an

agreement on all material terms necessary for a settlement, mediation ended and the litigation resumed.

In July 2018, with the parties having completed significant discovery and several appeals of the SDM's discovery rulings to Chief Judge Linares pending, the Court entered an order staying the Action. ECF No. 602. That Order further directed the parties to appear before Magistrate Judge Dickson for a settlement conference. Judge Dickson thereafter actively supervised and participated in the mediation process, which included four in-person sessions before him, as well as telephone conferences with the parties.

Once the parties made some progress with Judge Dickson's assistance toward the broad outlines of a potential settlement, the parties agreed to return once again to Judge Phillips for another round of mediation. After two intense, arms-length sessions conducted in the fall and winter of 2018, the parties agreed in January 2019 on a term sheet describing the principal elements of a settlement. With the term sheet in place, the parties turned to negotiating a detailed settlement agreement. Over the succeeding thirteen months, the parties had extensive discussions over telephone and e-mail in addition to many in-person meetings to draft the settlement agreement, which was finally agreed to and executed on March 13, 2020. Exhibit A. At the same time, with the assistance of experts on notice and

claims administration, and after considering suggestions from Defendants, Plaintiffs designed the proposed Plan of Distribution. Exhibit F.

As described in Judge Phillips' Declaration, throughout the three rounds of mediation before him, he observed that "the parties vigorously asserted their respective positions on all material issues" and that these "discussions were often difficult, though both sides remained respectful and professional." Exhibit E, ¶ 16. Judge Phillips has further stated his view that the parties were "represented by highly experienced, competent, and committed counsel" who were "extremely well-versed in the complex issues involved in this class action and were therefore able to appreciate the merits of the case and risks of continued litigation." *Id.* at ¶ 17.

Judge Phillips recognized that the proposed Settlement Agreement reflects a compromise between the parties. In that regard, Judge Phillips first noted that, based on his supervision of the settlement discussions, it is his view that "Plaintiffs' Counsel weighed the risks of litigation against the need to provide timely benefits to the members of the proposed Settlement Class," which might be delayed for years, if not altogether, without the settlement. *Id.* at ¶ 22. Judge Phillips next noted that Plaintiffs' Counsel have argued that damages can be determined on a class-wide basis. But as he observed, they have "acknowledged the risk that proof of these damages might entail review of individual cases to

some extent, which owing to the passage of time since Defendants' alleged fraudulent activity began nearly 30 years ago, could prove highly difficult." *Id.* at ¶ 23. Judge Phillips also observed that based on the disclosures in the sample of underlying plaintiffs' files produced, some underlying plaintiffs accepted modest settlement amounts like what Engelhard/BASF paid even from defendants for which there was evidence that their talc contained asbestos. *Id.* at ¶ 24. There was also some possibility that Plaintiffs' motion to compel privileged documents under the crime-fraud exception could be denied, which would impact the proofs Plaintiffs could offer at trial. And lastly, Judge Phillips recognized that, in all events, "Plaintiffs would have to contend with other defenses such as (1) the lack of evidence of a particular plaintiff's exposure to Emtal talc; (2) some plaintiffs relied upon allegedly since-discredited experts to prove the diagnosis of their claimed asbestos diseases; (3) some claims were dismissed for other reasons, such as being untimely filed; (4) some cases were filed in the wrong jurisdiction; or (5) some cases were dismissed because of some other procedural or substantive reason unrelated to the asbestos-content of Emtal talc." *Id.* at ¶ 27.

On the other side of the coin, Judge Phillips noted the risks that Defendants might face if this litigation were to continue, observing that "Plaintiffs claim to have identified documents and testimony that contradict the representations that Defendants made in the underlying cases to plaintiffs and the courts that: (1) Emtal

talc did not contain asbestos; (2) no evidence existed that Emtal talc contained asbestos; and (3) no Engelhard employee had ever testified about whether Emtal talc contained asbestos.” *Id.* at ¶ 29. He also noted the possibility that this Court could grant Plaintiffs’ crime-fraud motion, which would result in the disclosure of communications that Defendants have long-claimed are protected from discovery. *Id.* Judge Phillips accordingly found that the parties “assessed and balanced the substantial risks if this litigation continues” and that the Class Action Settlement thus “reflects a sound compromise by experienced, competent counsel.” *Id.* at ¶ 30.

Judge Phillips further recognized that the “proposed Class Action Settlement resulted from arm’s-length—and indeed, often contentious—negotiations which were in his opinion, fair, reasonable, and adequate and produced an outstanding result for the thousands of members of the proposed Settlement Class as it would, if approved, provide timely compensation to them.” *Id.* at ¶ 31. In reaching this conclusion, Judge Phillips “found it significant that Plaintiffs would be unlikely to have obtained more money and benefits to the class without years more of discovery, trial, and appellate proceedings, where at each stage, Plaintiffs would face substantial risks relating to the ability to obtain class certification and the merits of their claim.” *Id.* at ¶ 34. Judge Phillips at the same time also recognized that “providing the benefits to the Settlement Class now would itself be a significant benefit to the Class due to the passage of time since the alleged fraud

began.” *Id.* Judge Phillips thus found that the Class Action Settlement is “fair, reasonable, and adequate” as it resulted “from an arm’s length and often contentious mediation process” and would provide “substantial benefits to the proposed Settlement Class in light of the risks of the litigation.” *Id.*, Conclusion.

Judge Phillips’ declaration also confirms that Class Counsel’s attorney’s fees, cost reimbursements and class representative service fees were neither discussed nor negotiated until all material substantive terms had been negotiated and agreed to in principle.

III. Material Terms of the Settlement

The Class Action Settlement provides substantial benefits to the members of the Settlement Class by accelerating a resolution of the Action and providing significant monetary compensation.

A. The Settlement Class definition.

The Settlement Class is defined to include

all Persons within the United States and its territories who after March 7, 1984 and before March 30, 2011 filed and Served a lawsuit against Engelhard/BASF seeking asbestos-related bodily injury compensation or other relief arising from exposure to Emtal Talc products, and who before March 30, 2011 either: (A) had voluntarily dismissed or terminated the lawsuit as to Engelhard/BASF after the suit was filed, including any voluntary dismissal or release of claims due to settlement; or (B) had their lawsuit as to Engelhard/BASF involuntarily dismissed.

For the purposes of this definition, the date on which a voluntary dismissal or termination occurred for purposes of determining class membership is deemed to be the earlier of either (i) the date on which the agreement or consent by the plaintiff or his/her counsel to dismiss or terminate the lawsuit occurred; or (ii) the date on which the dismissal or termination of the lawsuit was entered by or in the court in which it was pending.

B. Benefits to the Settlement Class Members.

The Class Action Settlement, if approved by the Court would establish a non-reversionary Settlement Fund of \$72,500,000 paid by BASF and Cahill. BASF and Cahill will also pay up to \$3,500,000 for administrative expenses incurred in designing, establishing, and carrying out the Plan of Notice and the Plan of Distribution. Exhibit A, § 2.2.1, § 2.3.1.

C. Class Counsel Fees and Litigation Cost Reimbursement.

In addition to paying the direct benefits to the Settlement Class Members and administration costs, BASF and Cahill have relieved the Settlement Class of any responsibility to pay Class Counsel's fees by agreeing, subject to Court approval, to pay Class Counsel's attorney's fees up to \$22,500,000 and reimbursement of costs up to \$1,200,000, the application for which Defendants have agreed to not oppose. *Id.* at § 13.1.1. Class Counsel's fee, if approved, is

22.5% of the total amount paid by the Defendants to the Settlement Fund, Cost Fund and for Class Counsel's fees and costs, all of which benefit the Class.

D. Non-monetary benefits to the Settlement Class.

The Settlement Agreement provides that, subject to any operative protective and/or sealing orders, non-privileged Emtal Talc litigation materials shall be made available to anyone requesting them at no expense to Defendants. Those materials include (a) the *Williams* Action's pleadings; (b) the *Williams* Action's non-privileged depositions (including non-privileged exhibits); (c) non-privileged documents produced or subpoenaed during discovery in the *Williams* Action, and (d) copies of the public non-privileged depositions (including non-privileged exhibits) taken in the New Jersey Superior Court *Sampson*, *Comandini*, *Fuschino*, *Paduano* and *Volk* actions.⁵ *Id.* at § 2.5.1. This discovery represents the culmination of eleven years of investigation and hard-fought litigation and provides a significant, non-economic benefit to the Class.

⁵ *Sampson v. 3M Co.*, No. MID-L-5384-11AS (N.J. Sup. Ct. Middlesex Cnty.); *Comandini v. Asbestos Corp. Ltd., et al.*, No. MID-L-10899-07AS (N.J. Sup. Ct. Middlesex Cnty.); *Fuschino v. Asbestos Corp. Ltd., et al.*, No. MID-L-4398-07AS (N.J. Sup. Ct. Middlesex Cnty.); *Paduano v. Ace Scientific Supply Co., et al.*, No. MID-L-2976-09AS (N.J. Sup. Ct. Middlesex Cnty.); *Volk v. Asbestos Corp. Ltd.*, No. MID-L-10012-07AS (N.J. Sup. Ct. Middlesex Cnty.).

E. The Plan of Distribution.

The \$72.5 million Settlement Fund being established under the proposed Settlement will be distributed according to a Plan of Distribution (“Plan” or “POD”) approved by the Court. The terms of the Settlement Agreement gave Class Counsel the sole responsibility and right to design the Plan and obtain court approval. While Class Counsel consulted with Defendants about the Plan, the Defendants did not, and do not have any responsibility for the Plan’s distribution scheme, any claim adjudications required under the Plan to implement it, nor for any of the payments or amounts of payment from it. As described in depth in the Declarations by the Settlement Administrator, attached as Exhibit C, the claims of 8,052 Settlement Class Members were approved, with 5,275 of those being from Primary Claimants. No appeals have been taken of the Settlement Administrator’s claims adjudications.

Class Counsel, with the assistance of experts on asbestos claims facility design and operations as well as lien administration, developed the Plan, which is annexed to this Motion for Final Approval as Exhibit F. Following preliminary approval of the Plan, the Settlement Administrator published a copy of the Plan on the Settlement’s Website. Exhibit C (Declaration of Mark Eveland), Exhibit A.

By way of overview, the Plan established a Settlement Fund claims facility that received claims submissions by putative Class Members who wanted to

receive compensation from the Fund. Compensation will be awarded according to three separate but complementary compensation programs (including one based on existence and severity of asbestos disease) and mechanisms for supporting and adjudication of claims. Since the Court entered the Preliminary Order, the claims facility's operations have been managed and conducted by the Settlement Administrator and a Lien Administrator according to the terms of the Settlement Agreement and Plan, all of which has been overseen by the Settlement Trustee/Special Master, the Hon. Marina Corodemus, J.S.C. (retired), under the auspices of the Court.

In several respects, the Plan bears some similarity to a Section 524(g) Asbestos Bankruptcy Claims Resolution Trust facility. But due to the unique circumstances of this case, there are some material differences between Asbestos Trusts facilities and the Plan. Those circumstances included foreseeable (and ultimately borne out) difficulty that some Settlement Class Members would have in locating and marshalling information and evidence to support their claims given the death of many original plaintiffs, the unavoidable loss of pertinent documentation and the simple passage of time since the Underlying Lawsuits were actively prosecuted. Class Counsel and Verus, LLC, their consulting expert and Settlement Administrator, took these considerations into account in designing the Plan and believe that its allocation scheme and eligibility requirements fairly,

appropriately, and equitably distribute the Settlement Fund to eligible Settlement Class Members. *See* Declarations of Daniel Myers and Mark Zabel annexed as Exhibits G and H. As described below, during the claims administration process, various claimants took advantage of the resources the Plan provided to Class Members, such as the availability of information and documents collected during the *Williams* litigation. Many requested that Verus, or in some cases Class Counsel, assist them by searching for proof of their Underlying Lawsuits having been filed and/or dismissed or information on their claimed asbestos injuries. In addition, many claimants took advantage of the opportunity to have Verus poll bankruptcy trust claims to seek information they no longer had.

1. Class Counsel request that the Court finally approve the appointments of the Settlement Trustee, Claims Administrator and Lien Administrator.

Pursuant to the Preliminary Approval Order, the Settlement Trustee has overseen and managed the Settlement Fund's interim claims facility allocation and distribution processes as a Special Master under Fed. R. Civ. Pro. 53. Class Counsel nominated the Honorable Marina Corodemus, J.S.C (Retired) to serve as the Settlement Trustee for the class administration process that commenced after entry of the Preliminary Order. Judge Corodemus has performed her duties diligently and in the best interests of the Class. Class Counsel request that the

Court approve her continued service in these roles through final disbursement of the Settlement Fund.

Judge Corodemus's qualifications are set forth in her Declaration in Support of Appointment as Settlement Trustee and Special Master, which is annexed to Plaintiffs' Motion for Final Approval as Exhibit I. To briefly summarize, she is a highly respected former New Jersey Superior Court judge who presided over New Jersey's Mass Tort Program for many years. Since leaving the bench, Judge Corodemus has served as special master or settlement trustee of several major mass tort claims resolution facilities. She has substantial experience and expertise in overseeing and administering mass tort settlements, including the adjudication of claims disputes. At present, Judge Corodemus is additionally serving as one of the trustees of the G-I Holdings Inc. Asbestos Personal Injury Settlement Trust, a 524(g) settlement claims facility that served as one of the models considered in designing the proposed Plan.

Following appointment as Settlement Administrator, Verus has assisted the Settlement Trustee in executing the Plan. As the Settlement Administrator, Verus has received, processed, and made provisional determinations of claims to the Settlement Fund (which were all subject to review, modification or approval by the Settlement Trustee). Verus has also established and maintained the Settlement Fund's claims processes, books, records and internal controls, handled the Fund's

routine inquiries and communications, and administered the Plan's anti-fraud program. Following final approval of this Settlement, Verus will distribute the Settlement Fund.

Verus' qualifications for continuing its service as Settlement Administrator are set out in the Declaration of Daniel Myers, attached as Exhibit G. In addition to serving as Settlement Administrator since the Court granted preliminary approval, Verus served as a consultant to Class Counsel in designing the Plan and is thus fully familiar with the Plan's intent and requirements. Verus, in fact, performed many of the tasks needed to design the Plan: it estimated the class size and disease level distributions, the class member mailing lists (in conjunction with the Notice Agent), derived claims compensation ratios, and advised Class Counsel on appropriate and feasible claims administration procedures. The annexed declarations of Daniel Myers and Mark Zabel, (Exhibits G and H), explain Verus' roles and work in developing the Plan and its qualifications to serve as the Settlement Administrator. The declaration of Mark Eveland, (Exhibit C), describes the results of Verus' work as Settlement Administrator since preliminary approval.

The Preliminary Approval Order further appointed Edgar C. Gentle, III, Esq., and his law firm, Gentle, Turner, Sexton & Harbison, LLC, to collectively serve as the Lien Administrator. Under both the Plan and Settlement Agreement, the Lien Administrator will, as a settlement benefit, assist each Settlement Class

Member to determine the existence of Government Liens and the amounts needed to clear and resolve such liens. The terms of the Settlement Agreement require that a claimant to the Fund must clear these Government Liens. The firm's qualifications for continuing their service as Lien Administrator are set out in the declaration of Edgar C. Gentle. Exhibit J.

2. Proposed distribution of the Settlement Fund among Class Members.

The Plan establishes three compensation programs to which Settlement Class Members meeting defined eligibility criteria may apply for compensation award payments (each program being referred to as a "Part"). The Settlement Fund's Part A program provides Base Compensation Payments to Settlement Class Members who can establish that the Claimant or Claimant's decedent during the Class Period filed an Underlying Lawsuit against Engelhard/BASF, which credibly asserted, in good faith, an asbestos injury caused by alleged exposure to Emtal Talc ("Base Payments"). The Plan's Part B program provides compensation payments to Settlement Class Members who satisfy Part A and also present sufficient evidence of an asbestos bodily injury sustained by them (or if applicable, their decedent). The Plan's Part C program establishes an Extraordinary Injury Fund ("EIF") from which the Settlement Trustee may, in exceptional cases, make a discretionary supplemental compensation payment to mesothelioma injury claimants subject to certain eligibility guidelines and limitations, as set forth in this Plan.

a. Payments under the Plan’s Part A program.

The Plan’s Part A program provides Base Payments from an original \$6.25 million sub-fund allocation of the Settlement Fund amount to Settlement Class Members whose Underlying Lawsuits were dismissed and who are releasing all claims related to the Underlying Lawsuits, including the *Williams* Class Action Claims, against the Released Parties. Settlement Class Members who were Injured Persons (which includes the personal representatives of a deceased Injured Person) in the Underlying Lawsuits are referred to as “Primary Claimants”. Each Primary Claimant who timely submits a claim for Part A compensation and establishes that his or her subject Underlying Lawsuit plaintiff presented a good faith credible claim for injuries allegedly caused by exposure to Emtal Talc will receive a payment of \$500 from the Part A sub-fund.

Generally speaking, claims on behalf of a deceased Injured Person must be filed by the deceased person’s estate representative (who is considered to be a “Primary Claimant” under the Plan). In response to reports of probate, surrogate and other public record offices being closed or limited in their access or services during the Covid Pandemic, a Court Approved Procedure was adopted that provided for “Limited Purpose Representatives” to submit claims relating to deceased Underlying Lawsuit plaintiffs when an estate was not available. ECF No. 630. And where the only claim to the Settlement Fund being applied for with

respect to a deceased Injured Person are Part A compensation shares and no claims are made for compensation under Parts B or C, the claim may be submitted by the Injured Person's surviving spouse if any, or if none, by an Injured Person's surviving child with the written consent of all other surviving children, if any.

Where there are one or more Settlement Class Members associated with a Primary Claimant as a Derivative Claimant, that is, the Settlement Class Member's claim in the Underlying Lawsuit was based upon the Primary Claimant's asbestos injury and not theirs, then the Primary Claimant (or in the limited circumstances where a Derivative Claimant is making only the Part A Claim) will also be eligible to receive one additional Part A payment of up to \$500, for a total Part A award of up to \$1,000. The Settlement Administrator approved 5,275 Part A claims.

b. Payments under the Plan's Part B program.

The Plan's Part B program provides additional compensation to the Injured Persons in the Underlying Lawsuits (or their estates if deceased) out of an initial sub-fund allocation from the Settlement Fund of, at least, \$59.75 million. The Part B sub-fund will be distributed in its entirety among the Part B Claimants adjudicated during the claims process to be eligible to share in Part B distributions. The final amount of the Part B sub-fund may be adjusted during the course of the Settlement Fund's administration based on the Settlement Trustee's application of a spillover of unused allocations of the Part A or Part C programs' sub-funds, if

any, accrued interest earned on the Settlement Fund's assets, or the need to pay administration costs and expenses that cannot be paid or fully paid from the Settlement Cost Fund. The amount a Primary Claimant will receive depends on the nature of the disease allegedly sustained from exposure to Emtal Talc, the number of other persons who make approved Part B claims, and the nature of their diseases.

Part B compensation claims may be submitted only by Primary Claimants, including the Injured Person in the Underlying Lawsuit or by the Injured Person's estate or Limited Purpose Representative if such person is deceased. Class Members who apply and meet the eligibility requirements for a Plan B program award will receive a proportionate share of the Part B sub-fund based on a system of points awarded for the asbestos disease the Injured Person sustained and was diagnosed.

Eligibility for Part B compensation requires that a Primary Claimant establish (a) entitlement to Part A compensation; and (b) through credible, competent proof that the Injured Person sustained an asbestos-related injury falling into one of four defined categories of asbestos disease levels: (1) Non-malignant asbestos pulmonary disease (a "Part B Level 1 claim"); (2) Malignant Asbestos Disease Other Than Mesothelioma or Level 3 Claim Lung Cancer (a "Part B Level 2 claim"); (3) either: (i) Primary Lung Cancer with evidence of underlying

Bilateral Asbestos-Related Nonmalignant Disease; or (ii) Severe Asbestosis (a “Part B Level 3 claim”); or (4) Mesothelioma (a “Part B Level 4 claim”). A Part B claim may be based on the highest degree of the Injured Person’s disease progression provable as of the time of the claim submission to the Plan. Claimants may establish proof of medical injury through a certification of a prior equivalent asbestos disease level adjudication by one of several designated Qualified Asbestos Trusts or through individual adjudication of satisfactory medical evidence provided by the Claimant to the Administrator.

The Part B sub-fund will be allocated among and paid to those Part B Claimants adjudicated to be eligible according to the disease level sustained using an assigned number of “Qualifying Claim Points” based on whether they have a Part B Level 1, 2, 3 or 4 disease. Part B sub-fund compensation will be the claimant’s *pro rata* share of the Part B sub-fund calculated according to the formula $X/Y \times Z$, where *X* represents the number of the individual eligible Claimant’s adjudicated Qualifying Claim Points; *Y* represents the aggregate of all eligible Claimants’ adjudicated Qualifying Claim Points, and *Z* represents the Part B sub-fund dollar amount (including any spillovers from Part A or Part C sub-funds). The number of Qualifying Claim Points for each Part B claim level is set forth in the following Table 1. The number of Qualifying Claim Points assigned to each asbestos disease category in Table 1 was based upon a survey and analysis

conducted by Verus of compensation programs employed by eighteen relatively comparable bankruptcy asbestos trust claims facilities to allocate their asbestos claim trust funds among claimants suffering from different levels of asbestos disease. The declaration of Mark Zabel explains how Verus derived the values. Exhibit H.

Based on the Settlement Administrator's review and consideration of each claimant's claims submission and supporting documentation, as well as adjudications from Qualified Asbestos Trusts, the Settlement Administrator found that 5,056 Settlement Class Members qualified for compensation under Part B. Qualified B Fund claimants will receive at least \$59,750,000. Table 1 below provides (1) a breakdown of the number of claims approved for each of the disease levels established under the POD; (2) a *pro forma* calculation of the amount each claimant in a disease level category would receive for each of the disease levels based on the Part B Sub-fund's initial allocation without (a) any Spillover additions from the A Fund or EIF Fund; and (b) any reductions, reserves or Class Representative Service Award payments that are to be drawn from the B Fund

prior to distribution as provided for in the Plan; and (c) a breakdown of the total of award payments for each disease level.⁶

Table 1: Determined Compensation Level of Part B Claims			
Disease Level	# of Claims Approved	\$ Per Claim	Total
Level 1 Claim (Non-malignant asbestos disease other than severe asbestosis)	4,468	\$3,075.93	\$13,743,255.24
Level 2 Claim (Malignant asbestos disease other than Mesothelioma or Level 3 Lung Cancer)	127	\$27,683.39	\$3,515,790.53
Level 3 Claim (Either: (a) primary lung cancer with evidence of underlying bilateral asbestos-related non-malignant disease; or (b) severe asbestosis)	394	\$61,518.66	\$24,238,352.04
Level 4 Claim (Mesothelioma)	69	\$264,530.24	\$18,252,586.56
Total	5,058		\$59,749,984.37

⁶ The amount per each claim in Table 1 does not include the \$2,224,000 spill over to the B Fund from the A Fund and the \$6,500,000 spillover from the unused Part C EIF Fund. If approved, this total of \$8,724,000 will spill over to the B Fund and be distributed to, and thus increase the payments received, by Class Members entitled to payments from the Part B sub-fund.

c. Payments under the Plan's Part C discretionary EIF program.

The Plan has allocated \$6.5 million to the Part C sub-fund for an Extraordinary Injury Fund under which the Settlement Trustee has discretionary authority to award bounded additional supplemental compensation payments to a Primary Claimant with mesothelioma who establishes to the Settlement Trustee's satisfaction that the Primary Claimant sustained an extraordinary physical injury and/or economic loss allegedly as a result of exposure to Emtal Talc mined, milled, sold or distributed by Engelhard/BASF that is materially and substantially beyond that sustained by typical other Part B mesothelioma Primary Claimants.

To qualify for an EIF award, a Primary Claimant, in addition to establishing Class membership under Part A and Part B, must satisfy specific eligibility requirements that: (1) the subject Injured Person developed mesothelioma; (2) the Primary Claimant has not received appropriate and sufficient compensation for the subject mesothelioma injury; (3) the subject mesothelioma injury and resulting losses were allegedly a result of frequent, regular and proximate exposure to Emtal Talc; and (4) the Underlying Lawsuit's plaintiff lawyer or firm received direct representations from an Engelhard/BASF attorney regarding the absence of asbestos in Emtal Talc. No award made pursuant to the discretionary EIF program may exceed \$175,000.

No Settlement Class Member that applied for an EIF award qualified. As a result, the Plan provides that the entire unused portion of the Part C EIF sub-fund be transferred to the Part B funds and distributed to qualified Part B claimants.

d. Liens and personal attorney's fees that could reduce individual claim awards

The Plan of Distribution includes provisions establishing a Lien Resolution program. The Preliminary Approval Order appointed Edgar C. Gentle III, Esquire to serve as the Lien Administrator. In that capacity, he is responsible for identifying healthcare-related liens and the means of resolving those liens at no cost to Settlement Class Members. There are no other filing or administrative fees that will reduce any award from the Settlement Fund. Payments to extinguish and clear any lien, however, is the responsibility of the claimant or claimant's estate if deceased.

Regarding attorneys' fees for which Class Members may be responsible to pay, Class Counsel represent all Class Members regarding the issues common to all Class Members. Class Counsel are Cohen Placitella & Roth, P.C. Class Counsel have represented the Representative Plaintiffs and the Settlement Class for over eleven years and have undertaken significant efforts in this litigation, including motions practice and briefing, an appeal to the Third Circuit, multiple court appearances, depositions and written discovery, and settlement negotiations.

On October 20, 2020, Class Counsel petitioned this Court for \$22.5 million for their work and \$1.2 million in litigation expenses and costs. Defendants have agreed to not oppose Class Counsel's request, and to pay these amounts, if approved by the Court, separate and on top of the \$72.5 Settlement Fund and the \$3.5 million fund for the costs of providing a notice program to the proposed Settlement Class and for the administration of the claims submitted to the Settlement Fund. No member of the Class has objected to Class Counsel's Petition for the payment of attorney's fees and reimbursement of litigation expenses and costs.

The Notice distributed to putative Class Members advised that they have the right to hire their own lawyers to represent them in the Class Action and/or to file their claim for payment from the Settlement Fund. Exhibit D. The Notice makes clear that should a Class Member hire their own lawyer, they are responsible for paying that lawyer's attorney's fee which, in turn, will reduce the net compensation they receive from this Class Action.

The Notice also alerted Class Members that some lawyers may assert an entitlement to a fee from their individual clients based upon agreements entered into with Class Members or their decedents to prosecute the original claims in the Underlying Lawsuits. Class Members have been advised in the Notice that the fees charged by lawyers they hire or claimed by those under fee agreements entered

with Class Members or their decedents to prosecute the Underlying Lawsuits, may be a percentage of the amount of money awarded to them, thereby reducing the amount of money the Class Member will receive as a result of this Class Action.

The notice provided the following hypothetical for purposes of example only:

Should an attorney charge a class member a 33.3% contingency fee, and the class member is eligible for a Part A payment of \$500 and a Level 2 Part B Claim payment of \$10,824 as provided in Table 1 above (this example assumes there are 8,000 approved claims) for a total amount of \$11,324, the net recovery to the class member after payment of personal attorneys' fees would be \$7,550 (\$11,324 – \$3,774).

The Notice advised Class Members that their net recovery might also vary depending on the fee percentage their attorneys, if any, would charge. It is also made clear that such fees, which are their responsibility, are separate and apart from the fees that Class Counsel will be paid pursuant to the Settlement Agreement, if approved by the Court.

The Notice additionally informed Class Members that courts in class action cases have considered if and to what extent fees may be charged by non-Class Counsel and that the Court in this case has retained jurisdiction to consider and will make a determination about the fees and the amounts individual and former counsel may charge to Class Members.

F. The Notice Plan and its implementation.

Pursuant to the Preliminary Approval Order, the Notice provided Class Members with an explanation of their rights as Class Members, in a clear, direct manner that fully satisfies the requirements of Rule 23, the standards set out in the Federal Judicial Center’s *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (“FJC Checklist”), and due process.

To accomplish this goal, Verus initially developed a list of potential class members based on litigation claim data and documents produced in discovery. As described in the attached declaration of Orran Brown Sr., Chairman and a founding partner of BrownGreer, BrownGreer consulted with Verus and the Parties to develop a final Class Member list and updated information for a number of Class Members in collaboration with LexisNexis, a global provider of information and analytics. See Exhibit D. BrownGreer ran the names and additional data points available for the Class Members through LexisNexis’ proprietary database of over 83 billion public records to further identify deceased Class Members, their first-degree relatives, and a last known address for these relatives and the Class Members presumed to be living. After incorporating the results from LexisNexis, BrownGreer created two distinct lists: (1) the Class Member List containing 18,734 Class Members, 7,055 of whom LexisNexis and/or Verus’ data source(s) identified as deceased (the “Deceased”) and 11,679 of whom are presumed to be

living (the “Presumed Living”); and (2) the Relative List containing 30,269 known first-degree relatives⁷, grandparents, and grandchildren of deceased Class Members (the “Relatives”). BrownGreer further culled the Relative List to include only those 27,747 Relatives for whom there was no indication of being deceased, belonging to 5,520 of the Deceased Class Members, forming the “Presumed Living Relative List.”

Class Counsel and Verus also reviewed documents obtained in discovery from the Underlying Lawsuits using data science name matching techniques as well as other technology assisted document search and review techniques to further identify 2,871 of the 5,371 persons for whom BrownGreer did not have addresses. Those efforts resulted in the elimination of 241 persons from the original Class List that had been misclassified and were, in fact, lay or expert witnesses.

Using that data, the Notice Agent mailed direct notice and reached:

- 8,393 (71.9%) of all Presumed Living Class Member, representing 44.8% of the Settlement Class.
- 27,747 Relatives in the Presumed Living Relative List associated with 5,520 distinct Deceased Class Members. The Notice Agent was able to reach

⁷ First-Degree Relatives includes spouses, siblings, children, and parents.

25,683 Presume Living Relatives belong to 5,307 (75.2%) of total decease Class Members, representing 28.3% of the Settlement Class.

The Notice Agent also mailed the Notice to the last known address for 6,826 (96.8%) of the Deceased Class Members. Finally, Verus mailed and emailed the Notice to 50 attorneys and law firms, which collectively represented 4,929 Settlement Class Members, of which, the Notice Agent did not have contact information for 2,212 putative Class Members. Based on the foregoing, the Notice Agent estimates that it provided direct notice to 84% of the Settlement Class—a figure that Mr. Brown described as conservative in his declaration.

To supplement direct notice, the Notice Agent designed and implemented a publication notice program. The Notice Agent adapted a version of the Notice to be published in three national print publications as well as 41 regional publications, which were targeted at four states—Ohio, Mississippi, Georgia, and Alabama—in which 82% of the Presumed Living Class Members and 72.5% of the Presumed Living Relatives are believed to live.

In addition to the print media publications, the Notice Agent also implemented a digital (internet) notice campaign. The Notice Agent deployed (1) “banner” advertisements placed on the online version of *People* magazine; and (2) paid internet search terms ads responding to targeted keywords on top Internet search engines, such as Google. The banner advertisements campaign ran from

October 1, 2020, through October 31, 2020, and exposed the Notice 3,125,461 times to approximately 1,953,419 potential Class Members. Viewers of those ads clicked on the 2,294 times and were routed to the Settlement Website.⁸ The paid internet search terms ran from September 17, 2020, through October 18, 2020, and resulted in 75,721 impressions with 517 click-throughs to the Settlement Website.

The Notice Agent also issued a joint press release through Cision/PR Newswire, a leading provider of multimedia platforms and distribution. The press release explained the core aspects of the proposed Settlement and provide the address for the Settlement Website, as well as the toll-free number. 93 news media outlets, including yahoo! Finance, MarketWatch, and AP News with a combined audience of 119 million people, picked up the full press release.

Lastly, as the request of Class Counsel, the Notice Agent executed two postcard notice mailings to alert Settlement Class Members about deadlines and extensions thereto.

⁸ In his declaration, Mark Eveland describes the Settlement Website at www.emtaltalcsettlement.com. Exhibit C. Since the launch of that site, the Settlement Website has received 7,119 unique visitors, with 808 using the website to create claims.

IV. Argument

Federal Rule of Civil Procedure 23(e) requires judicial approval for the settlement of class actions. “The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court.” *Krell v. Prudential Ins. Co. of Am.*, 148 F.3d 283, 317 (3d Cir. 1998). But, as the Third Circuit has recognized, there is a “strong presumption” in favor of class action settlements, *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010), because of the “overriding public interest in settling class action litigation[.]” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004).

Settling a class action involves a two-step approval process under Rule 23. In the first stage, preliminary approval, the Court needs to make a threshold determination that the settlement could be finally approved after a future fairness hearing and, if so preliminarily found, ordering notice to the Class in accordance with an approved notice plan. Fed. R. Civ. P. 23(e)(1). Here the Court granted preliminary approval on September 3, 2020, after finding that this Settlement satisfied all requirements for approval. ECF No. 623.

In the second phase, final approval, the Court must hold a fairness hearing to determine whether to approve the settlement and order its implementation. Fed. R. Civ. P. 23(e)(2). To ultimately approve the settlement here, the Court must find that it is “fair, reasonable, and adequate” and that the requirements for class

certification have been satisfied. Fed. R. Civ. P. 23(e)(2). This fairness inquiry requires the Court to consider whether:

- (A) the class representative and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - i. the costs, risks, and delay of trial and appeal;
 - ii. the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - iii. the terms of any proposed award of attorney's fees, including timing of payment; and
 - iv. any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

For the reasons discussed below, this Court should grant Final Approval of the Settlement as it is "fair, reasonable, and adequate" and the certification of a settlement class is appropriate here.

The Settlement is the by-product of nine years of hard-fought litigation during which the parties became fully informed of the strengths and weaknesses of

their cases. The parties completed in-depth discovery including numerous depositions. Several rounds of rigorous negotiations took place before an experienced mediator and Magistrate Judge Dickson. In addition, as of the date of this filing, the settlement administration and claims review have been substantially completed to the universally positive response of the Class. The results of claims review also confirms the reasonableness and fairness of the recovery and its distribution to the Class Members.

The Third Circuit has provided an outline of factors by which a trial court should assess a class action settlement. We repeat the analysis of those factors that supported preliminary approval, all of which provide an ample record supporting final approval of this Settlement.

A. The Parties are entitled to a presumption that the settlement is fair.

The proposed Settlement is entitled to a presumption of fairness because (1) the negotiations here occurred at arm's length; (2) the parties engaged in extensive discovery; (3) the proponents of the Settlement are experienced in similar litigation; and (4) the reaction of the Class has been overwhelmingly positive with no objections or valid opt-outs nor any inquiry or response from state or federal agencies following service of CAFA notice. *See In re NFL Players Concussion Injury Litig.*, 821 F.3d 410 (3d Cir. 2016) (citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 231, 232 n.18 (3d Cir. 2001)).

1. The proposed Settlement is the product of good faith, extensive arm's length negotiations.

“Whether a settlement arises from arm's length negotiations is a key factor in deciding whether to grant . . . approval.” *Turner v. NFL (In re NFL Players' Concussion Injury Litig.)*, 301 F.R.D. 191, 198 (E.D. Pa. 2014). Courts in the Third Circuit have found the presumption of fairness applicable when a mediator assists the parties, *In re CIGNA Corp. Sec. Litig.*, No. 02-8088, 2007 U.S. Dist. LEXIS 51089, *12 (E.D. Pa. July 13, 2007), and the mediation occurred over several days, *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439, 444 (E.D. Pa. 2008).

The parties to the proposed Settlement participated in four rounds of settlement discussions, which ultimately led to the present proposed Settlement. The first round of mediation occurred in 2015 before Judge Phillips. The second round, also before Judge Phillips, spanned the summer of 2016 before an impasse over material terms ended the negotiations. The third occurred in 2018 before Judge Dickson following Chief Judge Linares' Order staying this matter. And the fourth and final one, again took place before Judge Phillips in late 2018 and early 2019. While the first two rounds of mediation were ongoing, the parties litigated the Defendants' Motion to Dismiss the Second Amended Complaint, which was denied, and engaged in extensive discovery and pressed their legal positions through hard fought motion practice before the SDM and appeals of SDM decisions to the District Court.

Based on his observations during the three rounds of mediation before him over three separate years, Judge Phillips found that “the parties vigorously asserted their respective positions on all material issues” and that these discussions were often difficult, though both sides remained respectful and professional. Exhibit E, ¶ 16. Judge Phillips also explained that given his understanding of the proceedings before this Court, the Third Circuit and the Special Discovery Master, he is “satisfied that the positions of the parties were thoroughly advanced, explored, and defended against.” *Id.* at ¶ 17. Judge Phillips further explained that over the course of the three rounds of mediation, the proposed terms of the settlement changed substantially and were refined as the parties worked toward the common goal of achieving a fair, reasonable, and adequate settlement. *Id.* at ¶ 18.

2. Extensive discovery and proceedings before the Third Circuit, District Court, and Special Discovery Master preceded the Settlement.

This Settlement was reached after the parties had engaged in lengthy and hard fought litigation, including Third Circuit review of the initial dismissal of the Action, from which each side (as well as the mediators) gained insight into and awareness of the others’ positions.

In fact, the parties produced and reviewed hundreds of thousands of pages of documents and completed 28 depositions, the majority of which took place outside

the state of New Jersey.⁹ Counsel are thus well aware of the strengths and weaknesses of their respective cases. And for that reason, too, this Court should presume the Settlement fair.

3. The proponents of the settlement are experienced in similar litigation.

Plaintiffs' Counsel not only have decades of experience in complex litigation representing catastrophically injured clients and the families of deceased victims but have also served in leadership roles and prosecuted modern mass tort cases involving breast implants, Vioxx, diet drugs, toxic chemical releases, talc, and other product liability cases. Exhibit DD, Firm Resume. CPR's lawyers have also in the past and continue to represent governmental entities in major complex litigation matters involving suppression and misrepresentation and product liability claims, such as New Jersey's tobacco litigation and Pennsylvania's Vioxx and

⁹ With so much formal discovery, this Court should presume that the settlement is fair as the Third Circuit has found the presumption applicable in cases with far less discovery. For example, in *NFL*, objectors argued against applying the presumption of fairness because class counsel did not conduct formal discovery before reaching the settlement. *NFL*, 821 F.3d at 436. The district court rejected this argument, as did the Third Circuit. In explaining why, the Third Circuit recognized that class counsel had undertaken "significant informal discovery." *Id.* "As part of that, class counsel obtained a database of claims and symptoms by retired players, consulted medical experts, and understood the legal hurdles claimants would face on dispositive issues such as preemption." *Id.* The Third Circuit thus observed that class counsel "were aware of the strengths and weaknesses of their case." *Id.* (internal citations omitted). The record in this Action far exceeds the investigation approved in *NFL*.

MTBE gasoline release litigations. CPR also has an extensive practice representing individuals or the families of those injured or killed as a result of asbestos exposure, medical negligence, product liability or other injury and complex litigation. Class Counsel moreover developed the evidence in a New Jersey state court case that led to the filing of this Action.

4. The reaction of the Class to the Settlement has been overwhelmingly positive.

With the commencement of the notice program on September 17, 2020, and a deadline for objections of February 16, 2021, would-be objectors had approximately five months to files objections. During the notice period, Class Counsel also filed their Petition for attorneys' fees, reimbursement of litigation expenses and costs, and incentive awards for the Class Representatives. In response, no objections have been filed to the approval of the Settlement or Class Counsel's Petition.

In addition to receiving no objections from Settlement Class Members, BrownGreer also gave the mandatory CAFA notice to the Attorney General of the United States and appropriate state attorneys general. As of the date of the filing of this Motion for Final Approval, not one of the CAFA recipients has objected to the Settlement.

* * *

Accordingly, all the factors for the presumption of fairness have been satisfied and the Settlement should be presumed fair.

5. The complexity of these proceedings and advanced stage of litigation support approving the Settlement.

Third Circuit jurisprudence requires that district courts consider two sets of factors in determining the fairness, adequacy, and reasonableness of a settlement: the *Girsh* nine-prong test and the *Prudential* considerations.

In *Girsh v. Jepson* the Third Circuit outlined nine factors to be considered in determining the fairness of a proposed class settlement:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

521 F.2d 153, 157 (3d Cir. 1975).

Following *Girsh*, the Third Circuit determined that a “sea-change [had occurred] in the nature of class actions,” and thought it useful to expand on *Girsh* to include several permissive, non-exhaustive factors (the so called “prudential” factors or considerations):

- (1) the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of

scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; (2) the existence and probable outcome of claims by other classes and subclasses; (3) the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; (4) whether class or subclass members are accorded the right to opt-out of the settlement; (5) whether any provisions for attorneys’ fees are reasonable; and (6) whether the procedure for processing individual claims under the settlement is fair and reasonable.

In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 311, 323 (3d Cir. 1998). Unlike the *Girsh* factors, “the *Prudential* considerations are just that, prudential.” *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013).

These factors support approving a settlement here, especially in light of the complexity of this case, its advanced discovery, the significant challenges inherent in further litigation, and the size of the Settlement Fund.

B. The *Girsh* factors.

1. Complexity, Expense, and Likely Duration of the Litigation.

“The first [*Girsh*] factor captures the probable costs, in both time and money, of continued litigation.” *Warfarin*, 391 F.3d 535-36 (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001)).

In *NFL*, the Third Circuit recognized that the probable costs of litigation were significant and supported approving the settlement because with “[o]ver

5,000 retired NFL players in the MDL alleg[ing] a multi-decade fraud by the NFL,” litigating the claims “would have been an enormous undertaking.” *NFL*, 821 F.3d at 438. In that regard, the Third Circuit noted that the discovery needed to prove the “fraudulent concealment of risks of concussions was extensive” and that the District Court would need to resolve “many issues of causation and medical science.” *Id.*

As in *NFL*, this matter involves thousands of putative Class Members and allegations that stretch back many years. To date, the prosecution of this matter has involved an enormous undertaking with the filing of three complaints, several motions to dismiss, an appeal to the Third Circuit, the appointment of a SDM to oversee discovery, more than 50 discovery motions, seven days of oral argument before the SDM, the exchange of over 300 pieces of meet-and-confer correspondence, the review and production of hundreds of thousands of pages of documents, and 28 fact depositions. And absent the proposed Settlement, significantly more expert and fact discovery would remain before the Court could reach any decision on Plaintiffs’ motion for class certification and Defendants’ motions for summary judgment. In view of this history, further litigation will be very costly and only increase the risks to all the parties.

Moreover, if the Court denies this Motion for Approval, after almost three years of development and interim execution of many of the elements of the

Settlement—including the Settlement Agreement, Notice Plan, Plan of Distribution, the Motion for Preliminary Approval of the Settlement and the administration of the Plan of Distribution involving receipt and adjudication of thousands of claims—the parties and the Court would have to resume litigation. The Court would need to resolve the appeal of the SDM’s decision on Science Day, Plaintiffs’ crime-fraud motion, Plaintiffs’ and Defendants’ appeals of the SDM’s other discovery and attorney-client privilege rulings as well as other complex issues. In addition, given the prior course of the litigation, it is reasonable to anticipate appeals by the losing party to the Third Circuit regarding many, if not all those decisions. Expert discovery would also need to proceed. And there would eventually be dispositive motion practice and, potentially, trial. *See, e.g., Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1322 (S.D. Fla. 2005) (the potential that appellate proceedings could delay class recovery “strongly favor[s]” approval of the settlement). All in all, guided by the lengthy and intense history of this litigation to date, the complexity, expense, and likely duration of this litigation amply support approval.

2. Reaction of the Class to the Settlement.

The second *Girsh* factor requires that the Court “gauge whether members of the class support the settlement.” *Warfarin*, 391 F.3d at 536 (quoting *Prudential*, 148 F.3d at 318). The reaction to the Settlement has been exceedingly positive with

there being no valid opt-outs¹⁰ and no objections to the Settlement, and this factor accordingly supports approval.

3. Stage of the Proceedings and Amount of Discovery Completed.

“The third *Girsh* factor ‘captures the degree of case development that class counsel [had] accomplished prior to settlement.’ *Warfarin*, 391 F.3d at 537 (quoting *Cendant*, 264 F.3d at 235). As the Third Circuit has explained, “[t]hrough this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *Id.*

In *Warfarin*, the Third Circuit found that class counsel adequately appreciated the merits of the case before negotiating the settlement when there had been three years of litigation, discovery of hundreds of thousands of pages of documents, many depositions, and consultations with experts. *Id.* The same appreciation exists and should be found here.

As in *Warfarin*, Plaintiffs’ Counsel have completed a substantial amount of discovery and consulted with numerous experts. They have reviewed hundreds of

¹⁰ Four individuals initially declined to participate in the settlement (none of the requests complied with the formal requirements of “opting out.”) Two revoked their requests and filed timely claims. A third was a derivative claimant of a decedent whose estate, a “primary claimant” had timely filed a claim. The fourth was filed by a relative of a decedent who did not qualify as a primary or derivate claimant under the Plan of Distribution and thus had not right to opt out.

thousands of pages of documents and taken and defended numerous depositions of party and third-party witnesses. Among other things, this discovery included the production and review of Representative Plaintiffs' personal files and review of a sampling of attorney files related to Underlying Lawsuits filed on behalf of putative class members, testing data and documents from the *Westfall* litigation,¹¹ BASF's extensive document production, litigation files and other documents produced by Cahill, documents produced by Engelhard's insurers, and the case files of several law firms that represented plaintiffs in the Underlying Lawsuits, including among others, Bevan & Associates, LPA ("Bevan Law Firm"), Early, Lucarelli, Sweeney & Meisenkothen LLC ("Early Law Firm") and The Law Firm of Allen L. Rothenberg. Discovery also included depositions of the individually named Plaintiffs, counsel for various plaintiffs in the Underlying Lawsuits, BASF's local counsel in the Underlying Lawsuits, current and former employees of BASF and Cahill, and designated representatives of BASF and Cahill. Plaintiffs moreover have filed appeals with both this Court and the Third Circuit, briefed issues on class certification and crime-fraud, and produced expert reports. Just as the Third Circuit found in *Warfarin*, this Court should find that Plaintiffs' Counsel

¹¹ The first case against Engelhard alleging asbestos-related injury from exposure to Emtal Talc was filed in 1979 by the Estate of Thomas Westfall. In that mesothelioma case, several Engelhard scientists testified about test results that Plaintiffs allege constitute evidence that Emtal Talc contained asbestos.

adequately litigated and appreciated the merits of this case before negotiating the proposed Settlement Agreement.

4. Risks to continued litigation also support approving the Settlement.

“The fourth and fifth *Girsh* factors survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of an immediate settlement.”

Prudential, 148 F.3d at 319. While Plaintiffs are confident in the strength of their case, they are also pragmatic, especially considering the zealous defense which Defendants have mounted since day one of this Action. Plaintiffs are consequently sensitive to the risks inherent in this complex litigation. Some of these risks are discussed below.

a. The availability of witnesses at trial.

Plaintiffs’ allegations turn on the positions taken in Underlying Lawsuits, many of which were concluded decades ago. Plaintiffs’ claims, however, face significant risks for the same reason that the Underlying Lawsuits took place decades ago, and during the intervening time between them and this Action, many underlying plaintiffs have died, and documents and court records have been lost for a variety of reasons. As a result, many of the named Plaintiffs do not have personal knowledge to support certain necessary elements of their claims. For example, the named Plaintiffs, all of whom are non-lawyers and some of whom are only remote

heirs to the plaintiffs in the Underlying Lawsuits, have little personal knowledge of their decedents' communications with their lawyers and defenses raised by Engelhard. *See, e.g.*, Exhibit Y (4/5/17 Holley Dep. Tr.), T14:24–15:1 (“[D]o you have any personal knowledge of representations made to your mother about talc? A. I have no personal knowledge of that.”); Exhibit AA (4/5/18 Williams Dep. Tr.), T28:16-23 (explaining that her understanding of the underlying suit comes from her deceased husband’s lawyer); *see also id.* at T30:21-24 (“It’s been so long ago, originally, you know, many, many years ago when this whole thing started. I don’t recall a lot.”).

Plaintiffs have accordingly relied on lawyers who filed the Underlying Lawsuits, including Thomas Bevan, an Ohio attorney, who brought a substantial number of the Underlying Lawsuits, including those on behalf of five of the named Plaintiffs, and Mark Bibro, a New York attorney who represents the remaining Plaintiff to substantiate their allegations. *See* Exhibit K (1/15/18 Hr’g Tr.), T132:21–133:3 (“SPECIAL MASTER: What are you going to do at trial, produce a plaintiff that says I don’t know? MR. ROTH: Yes, your Honor. . . and we’re going to have their family’s lawyer testify and describe what happened.”); Exhibit I, 10/23/15 Pls.’ Initial Disclosures (“[Mr. Bevan] has knowledge of the involuntary dismissal of his clients’ claims due to defendants’ . . . material omissions concerning Emtal talc.”); Exhibit M, 1/29/18 M. Holley Supplemental

Resp. to BASF Interrog. No. 12, Set 1 (“The Bevan Law Firm would likely know more about this evidence.”).

However, Defendants have raised many challenges to the lawyers’ testimony. For example, Mr. Bevan testified at deposition that he had little personal knowledge of the class-wide spoliation allegations apart from what he read in the *Williams* complaint. Exhibit X (5/15/18 Bevan Dep. Tr.), T193:21–194:5. Although Mr. Bevan has portions of old files relating to these claims, his ability to verify that he had complete files about the Underlying Lawsuits was limited. Discovery from other lawyers representing plaintiffs in Underlying Lawsuits confirmed, given the age of the cases, that they too cannot produce complete files of their cases. Defendants have also challenged Plaintiffs’ ability to prove their decisions were the result of fraud. They point to Mr. Bevan’s deposition testimony that he continued to file asbestos injury claims against Engelhard even after having concluded, based upon evidence provided by the Defendants, that there was no asbestos in Emtal talc. *Id.*, T139:13–141:25.

b. Defenses relating to Underlying Lawsuits.

Plaintiffs’ “potential damage award if the case were taken to trial,” *Prudential*, 148 F.3d at 319, may also face risk on account of the strength of Engelhard’s defenses in the Underlying Lawsuits. Although the parties disagree as to the relevance of these defenses in a fraud/fraudulent concealment action, prior

opinions in this case have recognized that, in order to prove their fraudulent concealment claims, “Plaintiffs must prove that decisions were made in the underlying case that would have been different if they had known evidence had been destroyed[.]” *See Williams*, 2017 U.S. Dist. LEXIS 122053, *28.¹²

While Plaintiffs believe that they do not have to prove in a fraudulent concealment case that they would have won their Underlying Lawsuits, Defendants pointed to potential weaknesses in the Underlying Lawsuits¹³ as a way of attempting to show that the plaintiffs’ decisions in those cases would have been the same no matter what. For example, Defendants have pointed out that many underlying litigants, despite filing lawsuits against Engelhard lacked evidence of exposure to Emtal Talc. Named Plaintiff Holley’s decedent, for example, did not “know the brand name, manufacturer, distributor or supplier” of any talc products she was allegedly exposed to. Exhibit Y (4/15/17 Holley Dep. Tr.), T121:11-15. Other Named Plaintiffs’ cases had similar exposure issues. *See* Exhibit Z (3/12/18 Wengerd Dep. Tr.), T287:13-22 (“Q. So in your mother’s original case, she identified Vanderbilt as the company whose talc she was exposed to, correct?

¹² However, Plaintiffs argue that under New Jersey Law, a fraudulent concealment action does not require proof that the underlying case would have been won if the concealed evidence had been known. *See, e.g., Williams*, 765 F.3d at 321; *Tartaglia v. UBS PaineWebber, Inc.*, 961 A.2d 1167, 1190 (N.J. 2008).

¹³ *See, e.g., Williams*, 765 F.3d at 321; *Tartaglia v. UBS PaineWebber, Inc.*, 961 A.2d 1167, 1190 (N.J. 2008).

[Objection] A. Yes. Q. No mention of EMTAL talc there? [Objection] A.

Correct.”); Exhibit AA (4/5/18 G. Williams Dep. Tr.), T41:7-11 (acknowledging that she had “no understanding of whether [her] father was exposed to talc from Southern Talc or Georgia Talc or Vanderbilt talc or EMTAL talc.”); Exhibit BB (4/17/18 Ware Dep. Tr.), T48:2-17 (acknowledging that based on sales records, her decedent’s employer had purchased only three bags of talc over a 30-year period).

Other litigation defenses, including class members’ lack of proof of asbestos-related disease, alternative causes of the disease (history of exposure to raw asbestos, not just talc, for example), and jurisdictional, statute of limitations, or other various arguments, could also have been—and were—raised by Defendants.

The potential weaknesses in the Underlying Lawsuits also extend to how those matters were settled. In particular, many Class Members’ suits were dismissed after mass group settlements that did not distinguish between defendants having asbestos in their talc and defendants not having asbestos in their talc. *See, e.g.*, Exhibit X, T90:21–91:1, 103:21–104:3, 303:6-22 (discussing group settlements); Exhibit Y, T113:25–114:3 (“Q. But you know now that Southern Talc Company was one of the seven defendants that settled with your mother’s estate for \$2,000, correct? A. Yes. Q. Even though Southern Talc was known by Mr. Bevan to have asbestos in its talc, correct? A. Yes.”). This practice—treating talc manufacturers alike, regardless of whether their products were known to

contain asbestos—could undermine Plaintiffs’ ability to show that but for the alleged conduct, class members’ decisions would actually “have been different”—as the Court had indicated would be necessary in order to hold Defendants liable on Plaintiffs’ fraudulent concealment claims. *Williams*, 2017 U.S. Dist. LEXIS 122053, *28

c. Establishing Damages.

Defendants also challenged the legal basis for recovering damages on a class wide basis. The SAC proposed to recover class wide damages on a theory of disgorgement, including disgorgement of “(a) the fees that Engelhard/BASF paid to Cahill,” and “(b) savings in liability and settlement payments, attorneys’ fees, other defense costs and expenses Engelhard/BASF realized” as a result of alleged wrongdoing in those litigations. *See* Exhibit M (1/29/18 Pls.’ Interrogatory Answers), at 11.

Establishing these damages, however, would have required overcoming legal challenges and factual obstacles. First, while Plaintiffs continue to believe that disgorgement damages would be available against all Defendants,¹⁴ the

¹⁴ *See, e.g., Zippertubing Co. v. Teleflex Inc.*, 757 F.2d 1401, 1411–12 (3d Cir. 1985) (“when one has unlawfully deprived another of a contract or a business opportunity and has made the opportunity his own, he is not to be permitted to retain any of the profits, any of the benefits of his unlawful conduct.”); *County of Essex v. First Union Nat’l Bank*, 89 A.2d 600, 607 (N.J. 2006); *Platinum Mgmt., Inc. v. Dahms*, 666 A.2d 1028 (N.J. Law Div. 1995); *Restatement (Third) Restitution and Unjust Enrichment* § 51 (2011).

Defendants have argued that disgorgement is “a form of [r]estitution measured by the defendant’s wrongful gain.” *Kokesh v. S.E.C.*, 137 S. Ct. 1635, 1640 (2017). In Defendants’ view, Engelhard experienced no “gain” here, where it only paid money to someone else (Cahill) during these lawsuits. On the other hand, Plaintiffs believe that Engelhard saved the cost of defense and liabilities it would have had to pay in the Underlying Lawsuits if the allegedly hidden evidence about Engelhard had been known. Cahill also argued that it did not gain anything from its alleged wrongdoing and could not be held responsible for disgorgement damages.

Plaintiffs, however, believe at a bare minimum that Cahill could be held liable to the extent of its having received legal fees and for other damages based on the Defendants’ joint activities. Resolution of these complex and novel legal issues would have demanded extensive effort and time, and there is no assurance that Plaintiffs’ legal theories would have been upheld.

Second, even if Plaintiffs were to prevail and establish that disgorgement is available here as a matter of law, the parties robustly debated how much money Engelhard actually saved in the Underlying Lawsuits, or whether that amount would even be ascertainable. As noted above, many cases against Engelhard ended in mass settlements with multiple talc manufacturers, with payments from those manufacturers being the same whether their products were known to contain asbestos or not. Defendants argue that this suggests that Engelhard’s alleged denial

of evidence of asbestos might not have actually saved it much money in legal fees or otherwise and that disgorgement damages could thus be hard to prove at trial.

To test Defendants' arguments, Plaintiffs sought discovery about Engelhard's highest, lowest, and average Emtal talc expenditures and defense costs for each year of underlying talc litigation, *see* Exhibit M (Pls.' Interrogatories Numbers 9, 10, 11), to which BASF objected. The SDM agreed with BASF that the extraordinary difficulty of calculating these long-ago figures would be "unduly burdensome." *See* ECF No. 534 (5/25/18 Order), at 3. He ordered Plaintiffs to share the costs of developing this information. *Id.* at 3-4, Plaintiffs objected to the cost shifting and the SDM denied their motion to compel discovery, *see* ECF No. 565 (6/12/18 Order), at 6-7. Plaintiffs filed an appeal before that second order was issued, *see* ECF No. 562, and have contended that the first cost-sharing order was wrongly decided and that the second denial order should be considered moot on account of the appeal. All of these disputes were stayed when Chief Judge Linares ordered the parties to mediation. Nevertheless, these issues—no matter how they were ultimately to be decided—illustrate the continuing burden and risks Plaintiffs could endure in developing their damage arguments and marshalling the facts necessary to support them at trial.

d. Ascertaining the Proposed Class.

Defendants also challenged the ability of Plaintiffs to ascertain and identify members of the Settlement Class, a prerequisite to class certification over Defendants' objections. Many of the original complaints in the Underlying Lawsuits had very terse allegations against Engelhard that lacked reference to Emtal Talc and instead contained boilerplate recitations of non-specific personal injury claims against dozens of defendants. Defendants point to discovery in this case that in their view shows that documentation supporting the Class Members' underlying claims against Engelhard at the time they were dismissed was thin or non-existent. Consequently, Plaintiffs faced significant risks to a contested class certification from this lack of verifiable evidence.

By agreeing to the Settlement, however, Plaintiffs no longer face these risks, because the Plan of Distribution under the Settlement establishes eligibility standards that have in fact enabled the Settlement Administrator to determine class membership using readily available, objective criteria. These eligibility standards ensure that the Settlement Class is ascertainable while providing significant safeguards against fraudulent and erroneous claims.

e. "Science Day" and the Emtal Talc testing record.

Defendants argued that Plaintiffs' allegations turn in part on alleged concealment of test results that Plaintiffs believe show Emtal Talc contained

asbestos and that a Science Day was needed to assess the validity of these test results. The Court denied their first request without prejudice for a Science Day. ECF No. 261. Defendants continued to challenge Plaintiffs' view of what the underlying testing revealed and argued that a Science Day could be relevant to showing the absence of fraudulent intent. Defendants asked the SDM to hold a "Science Day" and hear expert testimony on the matter. Defendants' request was a subject of considerable disagreement between the parties—Plaintiffs argued before the SDM that expert testimony on the testing record is not relevant to the merits of a fraud and fraudulent concealment case, the issue being whether evidence was concealed, not the weight of that evidence. The SDM, however, eventually came to believe that scientific testimony would be relevant to the case and to his decision on Plaintiffs' pending motion to invoke the crime-fraud exception to BASF's attorney-client privilege. *See* Exhibit CC (2/23/18 Hr'g Tr.), T121:12-13 ("SPECIAL MASTER: ... I don't know, nor have I been given the type of expert information I would need in order to judge whether X number of fibers per million is a good thing or a bad thing.").

Over Plaintiffs' objections, the SDM scheduled a Science Day hearing, calling for expert testimony on topics including "the overall testing record concerning Emtal talc to determine whether and to what extent it contained asbestos," and "the relevant capabilities and limitations of the testing methods then

used by BASF (and its predecessors),” among others. *See* ECF No. 485 (4/23/18 Order) at 3. Plaintiffs filed an appeal of this order, *see* ECF No. 506, and the parties continue to disagree over whether the requested testimony would be relevant, with Plaintiffs believing that it would be immaterial. The Science Day order, however, again illustrates the risks and costs Plaintiffs could face in further litigating these complex proceedings, which Defendants believe could turn in part on complicated issues of state of mind, as informed by scientific understanding and capabilities from a different time.

* * *

In sum, although Plaintiffs are confident in the strength of their case, they are aware that protracted litigation carries inherent risks that would delay and potentially endanger the monetary recovery of the putative Class Members. At the same time, if the Court approves the proposed Settlement Agreement, Plaintiffs and the putative Class Members would receive immediate and substantial relief. Similarly, although litigation classes can sometimes be decertified when they prove unmanageable, *see Krell*, 148 F.3d at 321, manageability risks are greatly reduced in the settlement context, where “a district court need not inquire whether the case if tried, would present intractable management problems[,] . . . for the proposal is that there be no trial.” *NFL*, 821 F.3d at 440 (quoting *Prudential*, 148 F.3d at 321). Consequently, considering this Settlement’s great and immediate value against the

uncertain litigation road ahead weighs strongly in favor of approving the Class Action Settlement proposed here under the fourth and fifth *Girsh* factors.

5. Ability of Defendants to Withstand a Greater Judgment.

“The seventh *Girsh* factor is most relevant when the defendant’s professed inability to pay is used to justify the amount of the settlement.” *NFL*, 821 F.3d at 440.

With respect to Cahill, its and its named members’ ability to withstand a class action judgment involving thousands of claims is significantly tied to its insurance coverage. Cahill has represented to Plaintiffs that its insurance carriers support the settlement, and that there is no issue about Cahill’s ability to fund its share of the Settlement.

With respect to BASF, as the Third Circuit has recognized, “in any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and, against the weight of the remaining factors, this fact alone does not undermine the reasonableness of the settlement.” *Id.* (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 323 (3d Cir. 2011)). Indeed, as this Court has recognized, even if a company “could afford a greater amount than the settlement would require, that doesn’t support ‘rejecting an otherwise reasonable settlement.’” *Halley v. Honeywell Int’l*, No. 10-3345, 2016 U.S. Dist. LEXIS 55765, *40 (D.N.J. April 26, 2016) (Salas, J.) (quoting *Saini v. BMW of N.*

Am., LLC, No. 12-6105, 2015 U.S. Dist. LEXIS 66242, *26 (D.N.J. May 21, 2015)). The seventh *Girsh* factor does not stand in the way of approval.

6. Range of reasonableness of the Settlement in light of the best possible recovery and all attendant risks of litigation.

As to the eighth and ninth *Girsh* factors, courts ask “whether the settlement represents a good value for a weak case or a poor value for a strong case.”

Warfarin, 391 F.3d at 538. “The factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.” *Id.* “[T]he present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement.” *Prudential*, 148 F.3d at 322. The Settlement moreover must be judged “against the realistic, rather than theoretical potential for recovery after trial.”

Sullivan, 667 F.3d at 323. And in conducting the analysis, the court must “guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.” *In re GMC Truck Fuel Tank Prods. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995).

In ascertaining the reasonableness of the settlement amount the Parties considered claims data from asbestos settlement trusts to determine credible

estimates of the incidence rates of various asbestos diseases and compensation paid by disease level. Based on this review, the Parties were aware of the potential range of claim values in the Underlying Lawsuits and the losses allegedly sustained by the members of the Settlement Class because of the dismissal of their cases. This analysis, along with the Parties' consideration of the litigation risks identified above, provided a framework for settlement discussions. With the guidance of Judge Dickson and Judge Phillips, the Parties, as part of the proposed Settlement Agreement, agreed to the creation of a non-reversionary \$72.5 million Settlement Fund.

Plaintiffs also turned to Verus, the leading Section 524(g) asbestos trust claims administrator in the asbestos bankruptcy field, to help Plaintiffs develop the Plan of Distribution, which compensates Settlement Class Members based on four different asbestos disease levels. The monetary awards to the putative Settlement Class Members, as a result, take into account and reflect the values of the alleged injuries that had been at issue in the Underlying Lawsuits, which Plaintiffs allege were fatally compromised as a result of the alleged fraudulent concealment of the facts about Emtal Talc.

With the claims administration essentially complete, save for the disbursement of the Settlement Fund, which requires first the completion of remaining claims audits, determination of outstanding supplemental document

requests and reviews relating to some pro se claims and the allocation of Spillover funds from Part A and C into the Part B sub-fund, the Settlement Administrator has prepared *pro forma* calculations of the the disbursements to be made to Settlement Class Members for purposes of the fairness hearing. Under Part A of the Plan, Settlement Class Members will receive \$500 for each approved claim. According to the *pro forma* calculations, under Part B, Settlement Class Members will, for example, be paid \$3,075.93 for qualifying Level 1 Claims (non-malignant asbestos disease other than severe asbestos) and \$264,530.24 for qualifying Level 4 Claims (Mesothelioma). According to Verus, “[t]he value given to individual Level 4 Mesothelioma claims lies within the historical liquidated value range that has been applied to the 524g trusts that Verus administers. (Exhibit C, Declaration Mark Eveland).

Given the level of compensation each Settlement Class Member could expect to receive, the proposed settlement here is “reasonable ... in light of the best possible recovery and ... in light of the risks the parties would face if the case went to trial.” *Warfarin*, 391 F.3d at 538. This is all the more so because discovery has revealed that many Settlement Class Members settled with other talc defendants (including those whose products were known to contain asbestos) for as little as \$3,000 for a mesothelioma claim, \$2,000 for a lung cancer claim, and \$1,000 for an asbestosis claim.

The Class Action Settlement accordingly affords members of the putative Settlement Class with immediate compensation that provides them with a fair value for their claims considering the significant risks Class Members may have in establishing all the elements of fraud and fraudulent concealment. The settlement amounts readily fall within the range of reasonableness.

C. Prudential Factors.

Third Circuit jurisprudence also requires that district courts consider the *Prudential* factors in assessing the reasonableness of class settlement. These are (1) the maturity of the substantive issues in the case and other factors that “bear on the ability to assess the probable outcome of a trial on the merits,” (2) the “existence and probable outcome of claims by other classes and subclasses,” (3) the comparison between the results achieved by settlement and the results likely to be achieved for other claimants, (4) whether class members have the right to opt-out of the settlement, (5) whether any provisions for attorneys’ fees are reasonable, and (6) whether the procedure for processing individual claims under the settlement is fair and reasonable. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 311, 323 (3d Cir. 1998). The relevant *Prudential* factors support approving the Settlement in this case.

First, given the maturity of the substantive issues and discovery, the Parties possess adequate information on the strengths and weaknesses of Plaintiffs’ claims,

and thus the probable outcome of a trial on the merits. Counsel here thoroughly investigated the claims raised in the Action, conducted extensive document discovery, took 28 depositions, and exchanged substantial information during negotiation and mediation sessions. Notably, the parties only reached settlement terms following the close of fact discovery. Moreover, Plaintiffs' counsel not only retained various experts and other professionals to serve as experts but also served expert reports on the subjects of causation and damages. The case proceeded against the backdrop of decades of asbestos litigation. Given the advanced stage of discovery and motion practice here, including appeal to the Third Circuit, the first *Prudential* factor is thus more than satisfied. *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201, 235-36 (3d Cir. 2001) (affirming approval of settlement even though litigation was "settled at an early stage" after only "informal" discovery).

Second, there are no other classes or subclasses and as such, this factor is not relevant to these proceedings.

Third, as for the results achieved by the settlement for individual class or subclass members and the results achieved for other claimants, this factor favors approval of the Settlement as well, given that Settlement Class Members stand to receive substantial compensation that is, in some cases, orders of magnitude higher than what similarly situated plaintiffs recovered in their Underlying Lawsuits against other talc defendants.

Fourth, the proposed Settlement Agreement accords members the right to opt out of the settlement. *NFL*, 821 F.3d at 441. None have.

Fifth, the provision for attorneys' fees paid separately by Defendants supports the Settlement because such fees will not be paid out of the Settlement Fund available to the Settlement Class Members. The way the attorneys' fees were negotiated further weighs strongly in favor of the Settlement as the Parties did not even discuss attorneys' fees until after an agreement in principle on all other materials had first been reached. Finally, with Class Counsel having filed their Petition for attorneys' fees, reimbursement of litigation expenses and costs, and an award of incentive awards to the Class Representatives, Settlement Class Members had a chance to review the Petition and if desiring, file an objection. None did and this too therefore supports the Settlement.

Sixth, the procedure for processing individual claims under the settlement is fair and reasonable. To start, the Plan provides all approved class primary and derivative claimants with an equal base share under Part A. It then, under Part B utilizes well recognized asbestos disease types and levels of severity to apportion shares of the Settlement Fund to award compensation based upon injury level. This is the same allocation design that Bankruptcy Courts have routinely approved for years under §524(g) of the Bankruptcy Code. As to process, the Plan considered foreseen difficulties in obtaining proof to make claims. For instance, required

proof of disease and disease level for Part B claims in the Plan of Distribution could be established through a certification of a disease adjudication from one of several designated asbestos trusts. The audit process contains appropriate and adequate protections against fraud, allowing certifications only from those trusts that themselves maintain reliable anti-fraud standards. Further adding to the integrity of the claims administration process, pursuant to Section 3.10.3 of the Class Action Settlement Agreement, Defendants requested that Verus review ten cases. Verus' response to Defendants' audit review is due on August 19, 2021. All in all, the claims process is fair, simple (in comparison to litigation), and familiar to the asbestos claimant bar.

Moreover, during the administration of the Settlement following Preliminary Approval, Class Counsel, the Settlement Administrator and the Settlement Trustee took several actions to facilitate the claims submission process. For example, it became apparent that in many cases, a deceased injured person did not have a personal representative because an estate had never been opened or had been closed because of completion of administration or the personal representative has died or cannot be located. Responding to this situation, the Settlement Trustee, in consultation with Class Counsel, entered a Court Administrative Procedure on Claim Submissions involving deceased Primary Claimants ("CAP") on December 16, 2020. Under the CAP, any person recognized as an intestate heir under the laws

of the state in which the injured person was domiciled at the time of death, would be eligible to become a “Limited Purpose Representative” that would be authorized to file a claim with the Settlement Fund for the deceased injured person and derivative claimants.

Based on feedback from potential Settlement Class Members and counsel representing potential Settlement Class Members, and recognizing that COVID-19, among other things, had complicated the claims submission process, Class Counsel and the Defendants petitioned the Court to extend several claims administration deadlines.

In addition, using information obtained in discovery, Class Counsel also assisted *pro se* claimants in locating or obtaining information or documents necessary to complete their claims applications.

For these reasons, the *Prudential* factors also support approval of the proposed Settlement Agreement.

D. The Court should certify the Settlement Class.

Plaintiffs request that the Court certify the Settlement Class as a part of its final approval Order. A court should certify a settlement-only class where: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the

representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). When confronted with a request for a settlement-only class certification, “a district court need not inquire whether the case if tried, would present intractable management problems . . . for the proposal is that there will be no trial.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 529 (3d Cir. 2004).

Once satisfied that the requirements of Rule 23(a) are met, the Court should then look to Rule 23(b) for more prerequisites. Under that provision, the certification of a class seeking monetary compensation requires a showing that “questions of law and fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

In conducting a “rigorous analysis” of the “factual and legal allegations” underpinning this request for certification, *Comcast v. Behrend*, 569 U.S. 27, 33 (2013), this Court can and should find that each of the requirements of Rule 23(a) and (b)(3) are easily met for the proposed Settlement Class.

1. Numerosity.

Rule 23(a)(1) sets forth what is commonly known as the “numerosity” requirement. The “numerosity requirement is satisfied when ‘the class is so numerous that joinder of all members is impracticable.’” *In re Modafinil Antitrust*

Litig., 837 F.3d 238, 249 (3d Cir. 2016) (quoting Fed. R. Civ. P. 23(a)(1)). This “calls for an inherently fact-based analysis.” *Id.* at 249–250 (citing *Stewart v. Abraham*, 275 F.3d 220, 226–227 (3d Cir. 2001)). In the Third Circuit, the numerosity requirement is generally met if “the potential number of plaintiffs exceeds 40[.]” *Id.*

The numerosity requirement is easily satisfied here as the Settlement Administrator has determined that 8,052 Settlement Class Members qualified for compensation under the Plan. In view of how many Settlement Class Members have submitted claims to the Settlement Fund, joinder of all parties would be impracticable, thus satisfying Rule 23(a)(1).

2. Commonality.

The second prong of Rule 23(a) — commonality — requires “consideration of whether there are ‘questions of law or fact common to the class[.]’” *Reyes v. Netdeposit, LLC*, 802 F.3d 359, 482 (3d Cir. 2015) (citing Fed. R. Civ. P. 23(a)(2)). “A putative class satisfies Rule 23(a)’s commonality requirement if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *Id.* (quoting *Rodriguez v. Nat’l City Bank*, 726 F.3d 372, 382 (3d Cir. 2013)). The court’s focus must be “on whether the **defendant’s conduct** [is] common as to all class members[.]” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 298 (3d Cir. 2011) (emphasis added). And that “bar is not a high one.”

Reyes, 802 F.3d at 486 (quoting *Rodriguez*, 726 F.3d at 382). The Third Circuit has “acknowledged commonality to be present even when not all plaintiffs suffered an actual injury, when plaintiffs did not bring identical claims, and, most dramatically, when plaintiffs’ claims may not have been legally viable[.]” *Id.*

The commonality requirement is easily satisfied here. Questions and answers surrounding the asbestos content of Emtal Talc, the knowledge of Defendants, what Defendants represented to plaintiffs in the Underlying Lawsuits, the legal obligation of Defendants to disclose the evidence of asbestos in Emtal Talc, and whether Defendants concealed such evidence as alleged in the SAC are common to Plaintiffs and the putative members of the Settlement Class.

The Court should therefore find the commonality requirement met as Defendants allegedly injured the putative Settlement Class Members through the “same course of conduct.” *See NFL*, 821 F.3d at 427 (finding that the commonality requirement satisfied because “the NFL Parties allegedly injured retired players through the same course of conduct.”). Indeed, even if the members of the Settlement Class sustained different degrees of bodily injury, their claims for fraud and fraudulent concealment, though, “still depend on the same questions regarding” Defendant’s conduct. *Id.* And thus, the commonality requirement is satisfied here.

3. Typicality.

Rule 23(a)(3) requires that the claims of representative plaintiffs be “typical of the claims...of the class.” In evaluating typicality, courts ask “whether the named plaintiffs’ claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.” *Baby Neal v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994). The purpose of that inquiry is “to uncover conflicts of interest between named parties and the class they seek to represent.” *In re Prudential*, 148 F.3d at 312.

The Third Circuit has “set a ‘low threshold’ to meet typicality.” *NFL Players Concussion Injury Litig.*, 821 F.3d 410, 428 (3d Cir. 2016) (quoting *Newton*, 259 F.3d at 183). The typicality requirement “does not mandate that all putative class members share identical claims.” *Newton*, 259 F.3d at 184. To the contrary, the class still passes muster even if the class members’ injuries vary. *NFL Players Concussion*, 821 F.3d at 428.

The inquiry into typicality “focuses on the similarity of the legal theory and legal claims; the similarity of the individual circumstances on which those theories and claims are based; and the extent to which the proposed representative may face significant unique or atypical defenses to her claims.” *In re Schering Plough Corp.*, 589 F.3d 585, 597–98 (3d Cir. 2009). Moreover, the typicality analysis focuses on the conduct of the defendants, not that of the class representatives. *In re IGI Secs.*

Litig., 122 F.R.D. 451, 456 (D.N.J. 1988). Thus, “factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.” *Baby Neal*, 43 F.3d at 58.

The claims of the Representative Plaintiffs typify those of the putative Settlement Class Members. The Representative Plaintiffs represent six deceased Emtal claimants (“Decedents”), each of whom, had sued Engelhard or BASF for asbestos-injury. As a result, Defendants’ conduct, according to Plaintiffs, rendered all claims brought by members of the putative Class virtually valueless because the inability to prove that Emtal Talc contained asbestos made all such claims defective, in the first instance. The Representative Plaintiffs’ claims typify every other putative Settlement Class Member because Defendants defended every lawsuit the same way by denying that Emtal Talc contained asbestos and that there was any evidence that it did.

4. The Representative Plaintiffs’ interests fully align with those of the putative Settlement Class as they made the same fraud, fraudulent concealment and conspiracy claims under New Jersey law.

The final prong of Rule 23 “encompasses two distinct inquiries designed to protect the interests of absentee class members: ‘it considers whether the named plaintiffs’ interests are sufficiently aligned with the absentees’, and it tests the qualification of the counsel to represent the class.” *In re Community Bank of*

Northern Virginia, 418 F.3d 277, 203 (3d Cir. 2005) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F3d 768, 800 (3d Cir. 1995)).

a. Representative Plaintiffs.

Class representatives “must be part of the class and possess the *same interest* and suffer the *same injury* as the class members.” *Id.* at 625-26. As the Third Circuit has explained, the “linchpin of the adequacy requirement is the alignment of interests and incentives between the representative plaintiffs and the rest of the class.” *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 183 (3d Cir. 2012).

The interests of the Representative Plaintiffs and putative Class Members are closely aligned here. They all brought lawsuits against Engelhard, or its corporate successor, BASF, which were dismissed, either voluntarily or not. They all also allege that from 1984 to 2010, Engelhard and its former law firm, Cahill, made misstatements or concealed evidence about the existence of asbestos in Emtal Talc, which caused (either voluntarily or not) the dismissal of their cases. In other words, all members of the putative Settlement Class allege that their injuries arose from one cause—the fraudulent concealment of evidence—by Engelhard and Cahill over a defined time-period. Representative Plaintiffs and the putative Class Members thus possess the *same interest* and suffered the *same injury*.

Indeed, the Settlement Class proposed here avoids the sort of fundamental conflict that might defeat a finding of adequacy: a futures problem. *See NFL*, 821 F.3d at 431. Unlike the “sprawling” proposed class in *Amchem*, which involved hundreds of thousands and perhaps millions of people who were or someday may be adversely affected by past exposure to asbestos products manufactured by one or more of twenty companies, the proposed Settlement Class compensates Class Members for injuries and losses suffered years ago by a defined group who had filed suits against one company (Engelhard/BASF), which were dismissed during the class period (and hence there are no future claimants to consider as all Class Members have already had an alleged manifest asbestos disease qualifying them), and uses a rational way to distribute the settlement proceeds. In other words, this class has much cohesion given that, unlike *Amchem* and *Ortiz*, there are no “exposure-only plaintiffs” in the putative class that have not already filed claims that were dismissed based on the alleged past conduct of the Defendants. Here, unlike *Amchem* and *Ortiz*, claimants either brought and had their lawsuit dismissed by March 30, 2011, or not. No divide exists between holders of present and future claims here. And lacking that, no conflict could be found between the putative class members, much less a fundamental one. *See In re Pet Foods Products Liability Litigation*, 629 F.3d 333, 346 (3d Cir. 2010) (rejecting argument that subclasses were necessary because “all class members . . . have present claims”).

While the proposed Settlement Agreement features a claims process that will differentiate payment shares between Class Members based on the degree of their underlying asbestos-injuries and disease, “differences in settlement value do not, without more, demonstrate conflicting or antagonistic interests within the class.” *Pet Foods*, 629 F.3d at 346. After all, “varied relief among class members with differing claims in class settlements is not unusual.” *Id.* (citing *Petrovic v. Amoco Oil Corp.*, 200 F.3d 1140, 1146 (8th Cir. 1999) (“[A]most every settlement will involve different awards for various class members.”). And even more to the point, “if subclassing is required for each material legal or economic difference that distinguishes class members, the Balkanization of the class action is threatened.” *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 202 (3d Cir. 2005).¹⁵

¹⁵ The Settlement’s release will release all class members’ personal injury claims against the Released Parties (which includes BASF) based on prior exposure to Emtal Talc, including any claim for possible future disease progression from a non-malignant asbestos disease to a malignant asbestos disease (a/k/a “second asbestos disease claims”). The Plan of Distribution will make its Part B Fund allocations based on the Primary Claimant’s (*i.e.*- the physically injured person) asbestos disease severity level as of the time of the claim submission to the Settlement Fund. The class notice advised currently living class members with a non-malignant asbestos disease that there will be no further right to claim for a malignancy against either the Released Parties or the Settlement Fund should a malignant asbestos disease manifest in the future. Of course, those Class Members retain all other existing rights and claims against other parties who are not defendants in this Action who might be liable. No class members opted out of this settlement.

No subclasses are necessary here. The Plan’s use of four levels of allocation from the Settlement Fund reflect the relative value of the different injuries, which drive the value of the alleged fraud and concealment damages allegedly sustained by members of the Settlement Class. Plaintiffs developed the Plan of Distribution by drawing on the experience and expertise of Verus as well as historical information on the resolution of asbestos-injury claims from several sources, including asbestos settlement trusts. The Plan therefore fairly reflects the extent of the injury that the Settlement Class Members incurred and which they could not prosecute without the evidence of asbestos in Emtal Talc that Defendants allegedly denied to them. The Court should therefore find that the interests of the Representative Plaintiffs and putative Class Members are closely aligned, and that establishing subclasses would have risked slowing down and even halting settlement discussions. *See N.F.L.*, 821 F.3d at 432 n.9 (agreeing that additional subclasses “were unnecessary and risked slowing down or even halting the settlement negotiations”).

a. Superiority.

Rule 23(b)(3)’s superiority requirement “asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.” *NFL*, 821 F.3d at 434. In performing this task, courts “consider the class members’ interests in individually controlling litigation,

the extent and nature of any litigation, the desirability or undesirability of concentrating the litigation, and the likely difficulties in managing a class action.”

Id. (citing Fed. R. Civ. P. 23(b)(3)(A)-(D)).

In *NFL*, the district court found the superiority requirement “satisfied because ‘the [s]ettlement avoids thousands of duplicative lawsuits and enables fast processing of a multitude of claims.’” *NFL*, 821 F.3d at 435 (citing *Turner*, 307 F.R.D. at 382). In much the same vein, this proposed Settlement would avoid thousands of duplicative lawsuits that as the experience demonstrates, would involve long and costly proceedings.

If each member of the putative Settlement Class were left to litigate his or her claims individually, decades of litigation would likely ensue at significant expense in many different state and federal courts throughout the country, potentially leading to conflicting rulings. Compensation resulting from such individual litigation is unpredictable given the disputes over product identification and the attorney-client privilege, which may not be resolved before lengthy, duplicative and costly trial and appellate proceedings are complete. The approval of a Settlement Class here is superior to individual litigation as the Plan of Distribution provides a coherent, fair, and economical process for a claims administrator to resolve all claims without the need for individual trials. The

Settlement Agreement also provides that the Defendants will pay \$3.5 million to cover the costs of administration.

b. Class Counsel.

In connection with this motion, Plaintiffs provide firm biographies for Cohen, Placitella & Roth P.C, which include the qualifications and accomplishments of its members. Exhibit DD. Plaintiffs' Counsel devoted themselves to this case for over a decade now. Throughout the long and hotly contested proceedings, highly able and experienced counsel represented Defendants. Plaintiffs' Counsel have also proved themselves to be more than adequate to represent the Class throughout this intense litigation, which included extensive pre-suit investigation about Emtal Talc and the Underlying Lawsuits after discovering the initial information from *Westfall*; development of a claim for relief based on fraud and fraudulent concealment which had occurred decades in the past; several rounds of significant motions to dismiss; a successful Third Circuit appeal; extensive discovery and intense motion practice on remand to the District Court; and multiple rounds of mediation.

5. The Court should certify a settlement class under Rule 23(b)(3) for monetary relief.

To gain certification under Rule 23, the named plaintiffs must show “that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other

available methods for fairly and efficiently adjudicating controversy.” *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 310 (3d Cir. 2008). Plaintiffs meet both of these Rule 23(b)(3) “predominance and superiority” requirements.

a. Common questions of law and fact predominate.

Common questions of law and fact predominate in this Action. Plaintiffs alleged that all the Underlying Lawsuits were terminated because of Defendants’ alleged fraud, namely that Defendants purportedly concealed the presence of asbestos in their talc products, which the Third Circuit opined is the essential starting point of any asbestos personal injury case. *Williams*, 765 F.3d at 322.¹⁶

The predominance inquiry “calls upon courts to give careful scrutiny to the relation between common and individual questions in a case.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 136 S. Ct. 1036, 1045 (2016). It “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *NFL*, 821 F.3d at 434 (quoting *Amchem Prods v. Windsor*, 521 U.S. 591, 623 (1997)). Compared to the commonality test of Rule 23(a), Rule 23(b)’s predominance test is more demanding. *Id.* (citing *Warfarin*, 391 F.3d at

¹⁶ Defendants do not admit this to be the case and claim the allegations against them are unfounded and not true, and that, in fact, they did nothing wrong or improper. The settlement before the Court is a genuine compromise of intensely different views that is proposed to bring years of demanding litigation to an end and avoid the further burden, distraction and considerable expense of continuing with the litigation.

528). But significantly, courts are “inclined to find the predominance test met in the settlement context.” *Id.* (quoting *Sullivan*, 667 at 304 n.29).

“Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws.” *Amchem*, 521 U.S. at 625. The principle readily extends to this fraud and fraudulent concealment action.

Recognizing this principle, the Third Circuit held in *Warfarin* that common issues predominated because plaintiffs alleged that DuPont “engaged in a broad-based campaign, in violation of federal and state consumer fraud and antitrust laws, to deceive consumers, TPPs, health care professionals, and regulatory bodies into believing that generic warfarin sodium was not an equivalent alternative to Coumadin.” *Warfarin*, 391 F.3d at 528. These allegations, as the Third Circuit explained, raised several questions of law and fact that predominated over any individual issues, “including the unlawfulness of DuPont’s conduct under federal antitrust laws as well as state law, the causal linkage between DuPont’s conduct and the injury suffered by the class members, and the nature of the relief to which class members are entitled.” *Id.* The Third Circuit also noted that proof of DuPont’s liability “depends on evidence which is common to the class members, such as evidence that DuPont made misrepresentations about Coumadin and generic warfarin sodium” *Id.* Or put another way, as the Third Circuit noted, “while liability depends on the conduct of DuPont, and whether it conducted a

nationwide campaign of misrepresentation and deception, it does not depend on the conduct of individual class members.” *Id.*

The Third Circuit similarly found in *NFL* that common issues focusing on the “NFL’s knowledge and conduct as well as common scientific questions regarding causation” predominated over individual ones. *NFL*, 821 F.3d at 434. As the Third Circuit recognized, the negligence claims there “depend[ed] on establishing that the NFL . . . knew of the dangers of concussive hits yet failed to modify the rules of NFL Football to mitigate them, or even to warn [r]etired [p]layers that they were risking serious cognitive injury by continuing to play.” *Id.* The fraud claims, according to the Third Circuit, likewise “suggest a similarly far-reaching scheme, alleging that the . . . MTBI Committee repeatedly obfuscated the link between football play and head trauma.” *Id.*

The objectors in *NFL* argued that “damage claims in mass-tort class action[s] . . . are too individualized to satisfy the requirements of predominance.” *Id.* The Third Circuit disagreed: “*Amchem* itself warned that it does not mean that a mass tort case will never clear the hurdle of predominance.” *Id.* (citing *Amchem*, 521 U.S. at 624). To the contrary, as the Third Circuit explained, the “class of retired NFL players does not present the same obstacles for predominance as the *Amchem* class of hundreds of thousands (maybe millions) of persons exposed to asbestos.” *Id.*

The Third Circuit has held that fraudulent concealment by a defendant “is a common question, subject to being uniformly resolved on behalf of all members of the class.” *Winoff Industries v. Stone Container Corp. (In re Linerboard Antitrust Litig.)*, 305 F.3d 145, 160–61 (3d Cir. 2002). It does not matter that there may be individual questions in an action for fraud and fraudulent concealment, such as on damages. *Id.*; see also *Newton v. Merrill Lynch, Pierce, Fenner & Smith*, 259 F.3d 154 (3d Cir. 2001) (“obstacles to calculating damages may not preclude class certification”). What matters is that Plaintiffs have alleged a common scheme to defraud all putative members of the Settlement Class in the same manner with the same result. Thus, as in *Warfarin* and *NFL*, liability here depends on whether Defendants allegedly denied Class Members an evidential record containing evidence that Emtal Talc contained asbestos.

E. The Notice and implementation of the Notice Plan satisfy due process.

After preliminarily approving a class action, the Court “must direct notice in reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). The Court should ensure that class members receive the “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

In “plain, easily understood language,” the notice must “clearly and concisely state”: “(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). Besides the requirements of Rule 23, the notice must satisfy due process requirements that the notice be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The long-form and short-form notices satisfy these requirements. Exhibit D (Declaration of Orran L. Brown, Sr.). Both notices are written in plain and straightforward language. They also objectively and neutrally apprise all Settlement Class Members about the nature of action; the benefits of the proposed Settlement, the definition of the Settlement Class to be certified; the claims, issues and defenses in the *Williams* Action; that the Court will exclude from the Class anyone who opts out of the Settlement pursuant to procedures and deadlines for doing so; the binding effect of a class judgment on Settlement Class Members; and

the procedures and deadlines for submitting objections to any aspect of the proposed Class Action Settlement. Based on the completeness of the disclosures, this Court should reconfirm its approval of the long-form and short-form notices. See, ECF No. 623.

To deliver the best notice practicable to the putative Class, the Parties together with their notice agent, Orran L. Brown, Sr., of BrownGreer PLC, developed a comprehensive Notice Plan that more than satisfies the requirements of Rule 23 and due process. Exhibit D. As described earlier, through extensive data analysis, BrownGreer managed to identify deceased putative Class Members, their first-degree relatives, and the last known addresses for these relatives and putative Class Members presumed to be living. In his Declaration, attached to the Motion for Final Approval of the Settlement as Exhibit D, Orran Brown detailed the methodology used to identify Injured Persons and their relatives, as well as the scope and reach of the Notice which, yielded over 84% of Presumed Living Class Members or their attorneys in the Underlying Lawsuits and at least one Relative of deceased Class Members. *See Grunewald v. Kasperbauer*, 235 F.R.D. 599, 609 (E.D. Pa. 2006) (approving direct notice plan that would reach 55% of the class).

To supplement the direct notice program, BrownGreer also designed a constructive notice program designed to expose potential Class Members to the notice. In so doing, BrownGreer considered the characteristics of the putative Class

Members and how those audience members are most likely to see and respond to the notice.

To provide supplemental notice to these putative Class Members, BrownGreer (1) placed advertisements in both national publications as well as regional ones in Ohio, Mississippi, Georgia, and Alabama; (2) placed banner advertisements in the online version of *People* magazine and through a paid search component involving the use of targeted keywords on top Internet search engines, such as Google; and (3) released a press release through Cision/PR Newswire that 93 news media outlets, with a combined audience of 119 million people, picked up. *See Turner*, 307 F.R.D. at 385-86 (approving notice program that included direct notice to putative class members and supplemental notice through paid media advertisements and internet ads on websites).

The Notice Plan as designed and implemented provided the best notice practicable under the circumstances; and therefore, this Court may and should find that the Notice Plan as executed satisfied the requirements of Rule 23 and due process.

F. The Plan treats class members equitably relative to each other.

The Plan of Distribution of the Settlement Fund is rational, fair and reasonable and should therefore be approved.

“Approval of a plan of allocation of a settlement fund in a class action is governed by the same standard of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate.” *In re Computron Software*, 6 F. Supp. 2d 313, 321 (D.N.J. 1998) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284-85 (9th Cir.), *cert. denied sub nom* 506 U.S. 953 (1992)). “A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.” *Id.* (internal citations omitted). *See also In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2007) (“It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits.”). “It is also reasonable to allocate more of the settlement to class members with stronger claims on the merits.” *In re Oracle Sec. Litig.*, No. 90-931, 1994 U.S. Dist. LEXIS 21593, *3-4 (N.D. Cal. 1994).

“An allocation formula need only have a reasonable, rational basis, particularly if recommended by ‘experienced and competent’ class counsel.” *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (quoting *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D. Minn. 1993), *aff’d*, 41 F.3d 402 (8th Cir. 1994)). While a court cannot “blindly accept the recommendation of class counsel[.]” *In re Federal Skywalk Cases*, 97 F.R.D. 380, 389 (W.D. Mo. 1983), it “is entitled to and [should] place considerable weight on

their recommendations.” *Id.* Indeed, as this Court has recognized, “courts give great weight to the opinion of qualified counsel” in determining the fairness, reasonableness and adequacy of a proposed plan of distribution. *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. 04-374, 2008 U.S. Dist. LEXIS 124269, *66 (D.N.J. 2008).

As discussed above, the Plan of Distribution creates three compensation programs to which Settlement Class Members meeting defined eligibility criteria may apply for compensation award payments based on the existence and severity of asbestos disease. The first program, Part A, will provide Base Payments of \$500 (or collectively \$1,000 if a derivative claim is involved) to Settlement Class Members who are Primary Claimants from a \$ 6.25 million sub-fund.

The Plan’s Part B program provides more compensation to Injured Persons in the Underlying Lawsuits from a \$ 59.75 million sub-fund to be allocated among and paid to those Claimants adjudicated to be eligible according to the disease level sustained using an assigned number of “Qualifying Claim Points” based on whether they have a Part B Level 1, 2, 3, or 4 disease. Under the Plan of Distribution, Verus determined the number of Qualifying Claim Points for each asbestos disease category based on a survey and analysis of the compensation programs employed by eighteen comparable bankruptcy asbestos trust claims facilities. *See* Declaration of Mark Zabel, Exhibit H.

Lastly, the Plan's Part C program provided for a \$ 6.5 million Extraordinary Injury Fund, under which the Settlement Trustee has discretionary authority to award additional compensation to claimants with mesothelioma who can also establish that they sustained an extraordinary physical injury and economic loss. No person who applied for a Plan C qualified for an EIF award under the Plan's eligibility criteria. The unused funds should be transferred to and distributed as part of the Part B fund in accordance with the Plan of Distribution.

As Plan of Distribution proposes to distribute awards to class members in a fair, rational basis based on the extent of their injuries, the Plan is reasonable and should be preliminarily approved.

G. Class Counsel's Petition for an award of attorney's fees and reimbursement of litigation expenses and costs should be approved.

Federal Rule of Civil Procedure 23(h) expressly authorizes the Court to "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." *Rossi v. Proctor & Gamble*, No. 11-7238, 2013 U.S. Dist. LEXIS 143180, *25 (D.N.J. Oct. 3, 2013) (citing Fed. R. Civ. P. 23(h)) (emphasis supplied). "The Supreme Court has suggested that such agreements should be encouraged as a matter of public policy." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 106 F. Supp. 2d 721, 722 n.1 (D.N.J. 2000) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). "In light of this recognized

principle, courts routinely approve agreed-upon attorneys' fees, particularly when the amount is independent and does not impact the benefit obtained for the class.” *Pro v. Hertz Equip. Rental Corp.*, No. 06-3830, 2013 U.S. Dist. LEXIS 86995, *16-17 (D.N.J. June 20, 2013); *see also, Local 56, United Food and Commercial Workers Union v. Campbell Soup Co.*, 954 F. Supp. 1000, 1005 (D.N.J. 1997) (granting class counsel the maximum amount of fees agreed to by defendant under the settlement agreement, where “class members . . . retain all that the settlement provides [and] do not lose any of the negotiated benefits on account of an attorneys' fee and costs award that equals the ‘cap’ on such an award set forth in the settlement”).

Class Counsel filed their Petition for payment of \$22.5 million in attorneys' fees, reimbursement of \$1.2 million in litigation expenses and costs, and the award of \$50,000 to each of the six Class Representatives for an aggregate of \$300,000 for their contribution to this litigation over the last decade to achieving this substantial recovery for the Settlement Class. ECF No. 628. With the Order extending Claims Administration deadlines, the Court administratively terminated the motion for addressing at the fairness hearing, (ECF No. 635), and authorized counsel to provide supplemental information if need be. Since the filing of the Fee Petition in October of 2020, Class Counsel has been actively involved in the development and implementation of the Notice Plan and Claims Administration

and providing assistance to Class Members or their personal counsel when requested. See Declaration of Christopher M. Placitella attached as Exhibit B. Class Counsel also worked on developing solutions to logistical problems that arose during the administration as a result of the COVID-19 Pandemic, such as obtaining a CAP allowing Limited Purpose Representatives” to file claims when an decedent’s estate was not available, implementation of online electronic signing of documents, or performing searches of the discovery documents and databases for information or documents needed by pro se applicants to complete claims that exceeded Versus’ staff’s capabilities.

As explained in the Motion, Class Counsel’s \$22.5 million fee request represents about 22.6% of the total value of the Settlement when all the financial benefits to the Settlement Class are considered. This is an eminently fair and reasonable fee percentage considering the benefits achieved for the Class and the fact that the parties negotiated the fee amount at arm’s length. The fee amount meets all the *Gunther-Prudential* attorney fee award factors under the percentage of recovery method. It also falls well within the ranges approved by courts in the Third Circuit, particularly considering the excellent results achieved, the time devoted by Class Counsel over the eleven years they have been pursuing this cause.

The fee request also, in fact, readily satisfies the lodestar method of determining fee awards if applied or used as a cross-check to the percentage of benefits method. As of the filing of the Petition in October 2020, the lawyers and professional staff of Cohen, Placitella & Roth have devoted **21,851.9** hours on this litigation for a lodestar of **\$17,723,343.40**, with a multiplier of just **1.27**. Since that time, Class Counsel and staff have spent more time assisting Verus, BrownGreer in the development of the notice and claims program as well as pro se claimants in the filing of their claims. As of the preparation of the Motion for Final Approval, CPR lawyers have devoted **23,344.6** hours on the case for a lodestar of **\$18,116,288.50**, for a multiplier of **1.24**.

As Judge Phillips emphasized, “Defendants agreed to not object to an award of attorneys’ fees and reasonable costs up to \$22,500,000 and \$1,200,000, respectively, that is *in addition* to the \$72,500,000 Settlement Trust Fund.” *Id.* Class Counsel’s litigation fees are fully documented, fair and reasonable given the length and scope of this litigation. As detailed in Class Counsel’s Petition, (ECF No. 628), the Representative Plaintiffs reviewed and searched for and provided information to Class Counsel for discovery. They prepared for and attended depositions. They responded to multiple sets of interrogatories, requests for documents, and requests for admissions. They also regularly conferred with Class Counsel on the status of the litigation and strategy through in person meetings,

correspondence, and phone calls. Their request for incentive awards of \$50,000 for each of the six Class Representatives, \$5,000 for each of the years they served as Class Representative is fair, reasonable and comports with other awards approved by this Court and the Third Circuit.

V. Conclusion

For these reasons, the Court should (1) approve the Class Action Settlement, (2) confirm and make final the certification of the proposed Settlement Class, (3) approve the Plan of Distribution and authorize the Settlement Administrator to disburse the Settlement Fund to the Settlement Class Members in accordance with the Settlement Agreement and the Plan of Distribution, (4) award Class Counsel the full \$22.5 million in attorneys' fees and \$1.2 million¹⁷ in reimbursable expenses that Defendants have agreed to pay over and separate from the \$72.5 million Settlement Fund; and (5) award the Class Representatives incentive awards of \$50,000 each for their contribution to achieving this long overdue and substantial recovery for the members of the Class.

Respectfully Submitted,

COHEN, PLACITELLA & ROTH, P.C.

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¹⁷ See *supra* footnote 3.

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Dated: August 19, 2021

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KIMBERLEE WILLIAMS, et al.

Plaintiffs,

vs.

BASF CATALYSTS LLC, et al.

Defendants.

No. 2:11-cv-01754 (JLL) (JAD)

CIVIL ACTION

**DECLARATION OF
CHRISTOPHER M. PLACITELLA
ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL**

I, Christopher M. Placitella, Esq., pursuant to 28 USCS § 1746, hereby declare as follows:

1. I am an attorney at law duly admitted to the bar of the State of New Jersey and the United States District Court for the District of New Jersey
2. I am a shareholder with the law firm of Cohen, Placitella & Roth, P.C, am entrusted with the representation of the plaintiffs in the captioned matter, and am fully familiar with the facts set forth herein.
3. The following documents listed below and annexed to this declaration are true and correct copies:

Exhibit No.	Description
A	The executed Settlement Agreement dated March 13, 2020.
B	Declaration of Christopher M. Placitella.

Exhibit No.	Description
C	Declaration of Mark Eveland.
D	Declaration of Orran L. Brown, Sr.
E	Declaration of Mediator and Former United States District Court Judge Layn R. Phillips.
F	Plan of Distribution of the Williams Emtal Talc Settlement Fund.
G	Declaration of Daniel Myers.
H	Declaration of Mark Zabel.
I	Declaration of the Hon. Marina Corodemus, J.S.C. (retired).
J	Declaration of Edgar C. Gentile.
K	Transcript of the January 15, 2018 Oral Argument.
L	Class Plaintiffs' Rule 26(a)(1) Initial Disclosures.
M	Plaintiff Marilyn L. Holley's Response to BASF Catalysts LLC's Second Sets of Interrogatories.
N	Declaration of Gayle Williams In Support of Motion for Preliminary Approval of Class Action Settlement.
O	Declaration of Kimberlee Williams In Support of Motion for Preliminary Approval of Class Action Settlement.

Exhibit No.	Description
P	Declaration of Marilyn L. Holley In Support of Motion for Preliminary Approval of Class Action Settlement.
Q	Declaration of Sheila Ware In Support of Motion for Preliminary Approval of Class Action Settlement.
R	Declaration of Donnette Wengerd In Support of Motion for Preliminary Approval of Class Action Settlement.
S	Declaration of Roseanne Chernick In Support of Motion for Preliminary Approval of Class Action Settlement.
T	March 18, 2020 agreement with Howard G. Sloane.
U	March 18, 2020 agreement with Thomas D. Halket.
V	March 18, 2020 agreement with Ira Dembrow.
W	March 18, 2020 agreement with Arthur A. Dornbusch.
X	May 15, 2018 Deposition Transcript of Thomas W. Bevan.
Y	April 15, 2017 Deposition Transcript of Marilyn Holley.
Z	March 12, 2018 Deposition Transcript of Donnette Wengerd.
AA	April 5, 2018 Deposition Transcript of Gayle Williams.
BB	April 17, 2018 Deposition Transcript of Sheila Ware.
CC	Transcript of the February 23, 2018 Oral Argument.

Exhibit No.	Description
DD	Resume of Plaintiffs' Counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 19, 2021

/s/ Christopher M. Placitella

CHRISTOPHER M. PLACITELLA

UNITED STATES DISTRICT COURT
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No. 2:11-cv-01754 (ES) (JAD)

CIVIL ACTION

[Proposed]

FINAL APPROVAL ORDER

This matter having been opened to the Court on the unopposed Motion for Final Approval of the proposed Class Action Settlement dated July 16, 2020 (the “**Settlement Agreement**”) and the Petition for (i) an award of attorney’s fees and reimbursement of costs and litigation expenses for Class Counsel’s work in this litigation; and (ii) incentive awards to the Class Representatives for their invaluable contributions they made to the achievement of the Settlement, by Plaintiffs Kimberlee Williams, Gayle Williams, Marilyn L. Holley, Sheila Ware, Donnette Wengerd, and Rosanne Chernick, each a named plaintiff in the *Williams* Action (together “Plaintiffs” or “Class Representatives”), acting through

their counsel, Cohen, Placitella & Roth, P.C. (“**Class Counsel**”) to completely settle the above-captioned lawsuit (the “*Williams Action*”) according to its proposed terms (the “**Settlement**”) as to all parties named therein and a settlement class to be certified by the Court for settlement purposes only. The Settlement Agreement sets forth the terms and conditions for the Settlement and dismissal with prejudice of the *Williams Action* upon approval of the Settlement Agreement.

WHEREAS, all capitalized terms and phrases used in this Final Approval Order that are otherwise not defined shall have the same meaning as in the Settlement Agreement;

WHEREAS, by Order dated September 3, 2020 (the “Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement Agreement; (b) found that the Settlement Class would likely be certified at final approval; (c) preliminarily approved the Plan of Distribution; (d) appointed Class Counsel and the Class Representatives; and (e) named: (a) the Hon. Marina Corodemus, J.S.C. (Retired) as the Settlement’s “Settlement Trustee and Special Master” (which appointment is consented to by the Parties and Co-defendants); (b) Verus LLC as the “Settlement Administrator” of the Settlement and its Qualified

Settlement Fund (the “Administrator”); (c) BrownGreer PLC as the Settlement’s “Notice Agent”; (c) Edgar C. Gentle, III, Esq., and the firm of Gentle, Turner, Sexton & Harbison, LLC, as the Settlement’s “Lien Administrator”; and (d) PNC Bank National Association, as the Settlement Cost Fund’s and Settlement Fund’s “Financial Institution”, all as defined in the Settlement Agreement;

WHEREAS, on October 20, 2020, Class Counsel filed the Petition (“Petition”) for (i) an award of attorney’s fees and reimbursement of costs and litigation expenses for Class Counsel’s work to date in this litigation; and (ii) incentive awards to the Class Representatives for their invaluable contributions they made to the achievement of the Settlement, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, the Court’s Preliminary Approval Order (ECF No. 623), and Section 13 of the Class Action Settlement Agreement;

WHEREAS, due and adequate notice has been given to the Settlement Class in satisfaction of the requirements of Rules 23(c)(2) and 23 (e)(1) of the Federal Rules of Civil Procedure and Constitutional Due Process;

WHEREAS, the 90-day period provided by the Class Action Fairness Act, 28 U.S.C. § 1715(d) has expired;

WHEREAS, the Court conducted a hearing on September 23, 2021 (“Final Approval Hearing”) to consider, among other things, (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice against Defendants;

WHEREAS, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments and objections received regarding the Settlement, and the record in the Action, and good case appearing therefore;

THEREFORE, IT IS on this _____ day of _____, 2021

HEREBY ORDERED as follows:

1. The Court has jurisdiction over this action and each of the Parties, including the Settlement Class Members under 28 U.S.C.

§ 1332, as amended by the Class Action Fairness Act, and that venue is proper in this district.

Certification of the Settlement Class

2. The Settlement Class provisionally certified by the Court in the Preliminary Approval Order is hereby certified pursuant to Federal Rule of Civil Procedure 23:

All Persons within the United States and its territories who after March 7, 1984 and before March 30, 2011 filed and Served a lawsuit against Engelhard/BASF seeking asbestos-related bodily injury compensation or other relief arising from exposure to Emtal Talc products, and who before March 30, 2011 either: (A) had voluntarily dismissed or terminated the lawsuit as to Engelhard/BASF after the suit was filed, including any voluntary dismissal or release of claims due to settlement; or (B) had their lawsuit as to Engelhard/BASF involuntarily dismissed (the “Class”).

“Engelhard/BASF” means and includes: BASF Catalysts LLC, Engelhard Corporation, Engelhard Industries, Engelhard Minerals & Chemicals Corporation, Minerals & Chemicals Philipp Corporation, Eastern Magnesia Talc Company, Porocel Corporation, and Pita Realty Limited, along with each of their successors, affiliates, direct and indirect parent(s) (including BASF Corporation and BASF SE), and any predecessor(s) who owned and/or operated the Emtal Talc mine in Johnson, Vermont at any point on or after October 1, 1967.

The date on which a voluntary dismissal or termination occurred for purposes of determining class membership is deemed to be the earlier of either (i) the date on which the agreement or consent by the plaintiff or his/her counsel to dismiss or terminate the lawsuit occurred; or (ii) the date on

which the dismissal or termination of the lawsuit was entered by or in the court in which it was pending.

3. The Court finds that certification of the Settlement Class is warranted based on the terms of the Settlement, under the prerequisites of Federal Rule of Civil Procedure 23(a) because: (1) the members of the Settlement Class are so numerous that joinder is impracticable; (2) there are issues of law and fact common to the class; (3) the Plaintiffs' claims are typical of the claims of the Settlement Class Members; and (4) the Representative Plaintiffs and Class Counsel fairly and adequately represent the interests of the Settlement Class. The Court further finds that the requirements of Federal Rule of Civil Procedure 23(b) have been satisfied as the common questions of law and fact predominate over questions affecting only individual members and the class action is superior to other available methods for the fair and efficient adjudication of this Action.

Appointment of Class Representatives and Class Counsel

4. The Court appoints Plaintiffs Kimberlee Williams, Gayle Williams, Marilyn L. Holley, Sheila Ware, Donnette Wengerd, and Rosanne Chernick as representatives for the Class. The Court finds that Christopher M. Placitella (who is designated as "Lead Class

Counsel”), together with Stewart L. Cohen, Harry M. Roth, Michael Coren, Robert L. Pratter, Eric S. Pasternack, Jared M. Placitella and the law firm of Cohen Placitella & Roth, P.C., have, can and will fairly and adequately represent the interests of Plaintiffs and the Class and therefore hereby appoints them as Class Counsel to represent the Class pursuant to Fed. R. Civ. P. 23(g).

Notice

5. The Court finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, have been satisfied.

6. The Court finds that the dissemination of Notice: (a) was implemented in accordance with the Notice Plan as approved by the Preliminary Approval Order (ECF No. 623); (b) constituted the best notice practicable under the circumstances; (c) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the releases to be provided thereunder); (iii) Class Counsel’s Petition for an award of attorney’s fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement, the Plan of Distribution, and/or Class Counsel’s Petition

for an award of attorney's fees and reimbursement of expenses; (v) the right to opt-out of the Settlement Class; (vi) the right to appear at the Fairness Hearing; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution.

Final Approval of the Settlement Agreement

7. The Court finds that: (a) the Settlement was entered into by the Representative Plaintiffs and Defendants in good faith following extensive investigation and substantial discovery sufficient for experienced plaintiffs' counsel to evaluate the matter; (b) the Settlement Agreement is fair, reasonable, and adequate; and (c) the Agreement resulted from vigorous arm's-length negotiations, which were undertaken by counsel with significant experience litigating complex class actions, with the assistance of an experienced mediator.

8. The Plan of Distribution is adequate, including the method of processing the claims of Settlement Class Members.

9. The Plan of Distribution treats Settlement Class Members equitably relative to each other when considering the differences in their claims.

10. Final approval of the Settlement Agreement is hereby GRANTED pursuant to Federal Rule of Civil Procedure 23(e) because it is fair, reasonable, and adequate to the members of the Settlement Class. In reach this conclusion, the Court considered the factors set forth in *Girsh v. Jepsen*, 521 F.2ed 153, 157 (3d Cir. 1975): (1) the complexity, expenses, and likely duration of the litigation; (2) the Settlement Class Members' reaction to the Settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation.

11. The Court further grants final approval of the Plan of Distribution, which was preliminarily approved by the Court on September 3, 2020 (ECF No. 623). The Plan of Distribution was

developed and recommended by experience class counsel, with the support of experts on claims administration and valuation. The Plan of Distribution represents an efficient and equitable means of distributing the Settlement Fund to the members of the Settlement Class in a timely fashion, without overly burdening claimants, and treats members of the Settlement Class equitably relative to each other. In particular, the Court finds that allocation of the Settlement Fund among different types of claims is appropriate and that the Plan of Distribution's use of Parts and Disease Levels is reasonable.

12. The Settlement Administrator shall administer all claims pursuant to the terms and conditions of the Settlement Agreement and Plan of Distribution.

13. No Settlement Class Member shall have any claims against the Representative Plaintiffs, Class Counsel, Defendants, Defendants' Counsel, the Settlement Administrator, or the Settlement Trustee, based on the distributions made substantially in accordance with the Settlement Agreement and approved by this Final Approval Order.

14. The Cost Fund and the Settlement Funds are approved, to the extent permitted by law, as qualified settlement funds pursuant to applicable United States Treasury Regulations.

Releases

15. Except as to any claim of those Opt-Outs who have validly and timely requested exclusion from the Settlement Class, of which there are none, the Action and all claims contained therein, as well as all of the Released Claims against any of the Released Parties by the Releasing Parties are hereby dismissed with prejudice pursuant to the terms and conditions of Paragraph 6.1 of the Settlement Agreement.

Attorney's Fees, Reimbursable Expenses, and Class Representative Award

16. The Court awards \$ 22,500,000 in attorney's fees to Class Counsel.

17. The Court grants Class Counsel's request for an award of costs and litigation expenses incurred to date and for those to be incurred in the future in attending to the administration and completion of the Plan of Distribution in the aggregate sum of \$1,200,000, with the sum of \$1,041,094.46 being immediately payable and the balance placed in the Settlement's Cost Fund. Applications for further disbursements

shall be made to the Settlement Trustee/Special Master, who is authorized to determine and make awards from the reserved amount to Class Counsel. Any unused reserved funds shall be returned to Defendants in accord with the Settlement Agreement's Cost Fund provisions.

18. All attorney's fees and reimbursement of costs and litigation expenses shall be paid by Defendants BASF Catalysts, LLC ("BASF") and Cahill, Gordon & Reindel LLC ("Cahill"), pursuant to Section 13.1 of the Class Action Settlement Agreement.

19. Class Representatives Kimberlee Williams, Gayle Williams, Marilyn L. Holley, Sheila Ware, Donnette Wengerd, and Roseanne Chernick shall each be paid incentive awards of \$ 50,000, pursuant to Section 13.2 of the Class Action Settlement Agreement.

BY THE COURT:

HON. BRIAN R. MARTINOTTI, U.S.D.J.

EXHIBIT B

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CIVIL ACTION

**DECLARATION OF
CHRISTOPHER M.
PLACITELLA**

I, CHRISTOPHER M. PLACITELLA, pursuant to 28 USCS § 1746, hereby declares as follows:

INTRODUCTION

1. I am admitted to the Bars of the State of New Jersey and this District Court, and am a shareholder of Cohen, Placitella & Roth, PC (“CPR”). I am a certified as Civil Trial attorney by the Supreme Court of New Jersey. I submit this declaration: (1) in support of Class Counsel’s Motion for Final Approval of the Class Action Settlement; and (2) in supplement to Class Counsel’s pending Petition for the Grant of Awards of Class Counsel Attorneys’ Fees, Class Counsel’s Reimbursement of Litigation Expenses and Class Representative Service Awards (“Fee/Cost Petition”). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called on to do so.

2. By the Preliminary Approval Order,¹ (ECF No. 623), the Court appointed the following CPR attorneys as Class Counsel to represent the Class defined in the order for settlement purposes: Stewart L. Cohen, Harry M. Roth, Michael Coren, Robert L. Pratter, Eric S. Pasternack, and Jared M. Placitella. The Court designated me as the Lead Class Counsel.

3. The Preliminary Approval Order also appointed the following as Class Representatives: Kimberlee Williams, Gayle Williams, Marilyn L. Holley, Sheila Ware, Donnette Wengerd, and Roseanne Chernick. These six women (or in two cases their deceased family member who initiated the action as personal representative successors) have been litigating this case through CPR since its inception.

4. After years of hard-fought litigation, the Class Representative Plaintiffs and Defendants executed a Class Action Settlement Agreement on March 13, 2020. The terms of the Settlement Agreement provide for establishing a non-reversionary \$ 72.5 million settlement fund (“Settlement Fund”) funded by the Defendants to compensate members of the putative Settlement Class. *See* Exhibit A, Class Action Settlement Agreement, § 2.2. The sole use of the \$ 72.5

¹ All capitalized terms have the same meanings as in the Settlement Agreement the Court preliminary approved at ECF No. 623

million Settlement Fund is to pay cash payments to the Settlement Class Members, including incentive awards to the Class Representatives, if allowed by this Court. The Settlement Agreement also provides for a separate \$3.5 million cost fund paid for by the Defendants to cover the costs of the Settlement's administration and class notice program. Attorney's fees and cost reimbursement awards by the court will be paid from separate funds capped at \$22.5 million and \$1.2 million, respectively, that the Settling Defendants are funding.

5. Over the course of my professional career, I have gained a comprehensive understanding of complex mass and class action litigation. I have additionally received national recognition from courts and my peers for my work in mass tort litigation in general and for my trial and appellate work in asbestos matters. I am the Editor-in-Chief of the New Jersey State Bar Association's *New Jersey Mass Torts and Class Actions Treatise*, a publication which is now in its second edition. Likewise, the complement of CPR attorneys serving with me as Class Counsel herein possess many years of experience in the field of mass tort and class action litigation. Together my partners and I have collectively served—or are presently serving—in leadership or key positions of responsibility in numerous environmental, consumer and product liability mass tort and class litigation matters. Among these, by way of illustration, are: ***In Re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices And Products***

Liability Litigation, MDL No. 2738 (appointed to serve as Plaintiffs' Liaison Counsel by Judge Wolfson); *New England Compounding Center Products Liability Litigation MDL* (D. Mass) and related Chapter 11 proceeding (D. Mass Bankr.) (Appointed by United States Bankruptcy Trustee to serve on the NECC Chapter 11 Official Creditors Committee and elected co-chair of the committee by its members.); *In re Imerys Talc America, Inc.*, Chapter 11 Proceeding, (D. Del. Bankr.) (Serving as appointed asbestos claimant member's attorney representative on Chapter 11 Official Tort Claimants Committee); *In Re DBMP LLC.*, (W.D. N.C Bankr.) (Serving as appointed asbestos claimant member's attorney representative on Chapter 11 Official Tort Claimants Committee); *In re Diet Drug Litigation* (National co-class counsel and co-class counsel in certified state class actions in New Jersey and Pennsylvania state diet drug litigation programs; member of National Settlement Negotiation Team and State Courts liaison on the interim claims administration trust and permanent claims facility); *In re: Tom River Ciba-Geigy Superfund Site Personal Injury Litigation* (counsel for numerous victims among large cancer case cluster associated with toxic wastes dumped at chemical manufacturing plant Superfund site); *In Re St. Jude Silzone Products Liability Litigation* MDL (D. Minn.) (appointed member of Plaintiffs Steering Committee conducting nationwide scale mass tort involving stemming from defective heart valve replacement device); *In Re Gems Landfill*

Superior Court Litigation (NJ Super. Law Div., Camden Vicinage) (Appointed co-class counsel to represent property devaluation and nuisance claims of property owners residing within a “Red Line Zone” established by New Jersey Department of Environmental Litigation around what at the time was ranked the 12th worst hazardous Superfund site in the nation). In addition, I or members of CPR are presently serving as class counsel and have been appointed by the Attorney General offices of the State of New Jersey and the Commonwealth of Pennsylvania to prosecute civil liability claims on their behalf as Special Counsel. In such capacity, CPR has represented these state governmental interests in large scale damages litigation against numerous product manufacturers or marketers, including my personal representation of the state of New Jersey in its tobacco litigation and my partners’ representation of Pennsylvania’s Department of Aging in its VIOXX fraudulent claims litigation; the Pennsylvania Department of Environmental Protection and other state agencies in their ongoing MTBE gasoline additive litigation; and the Pennsylvania Department of Conservation and Natural Resources in its Ryerson Station State Park mine subsidence litigation. In addition, I and other partners and members of CPR have represented scores of persons in individual bodily injury litigation for exposure to various products, including asbestos, commercial/ industrial and cosmetic talc.

6. From this body of work over many years, I believe I have gained substantial knowledge and an appreciation on the ranges of valuations that juries, courts, and experts place on injuries, and especially valuation of asbestos and product personal injuries. I also have gained knowledge and practical experience on the risks and challenges in proving liability and causation. Besides all that, I have developed experience and insights into appropriate and viable structures and frameworks for settling complex class actions, which I have applied in representing the Class here. Among these are that when negotiating an aggregate litigation settlement, there are a host of factors counsel must consider, such as the strength of the plaintiffs' claims, both individually and collectively, and the risks of litigation if the parties failed to settle this matter, including, among other things (a) all potential defenses; (b) delays in litigation and payment to long-injured plaintiffs; (c) appeals; (d) whether the costs of litigating individual lawsuits outweigh the potential individual recoveries; and (e) prospects a defendant will become insolvent and declare bankruptcy. In considering these factors, it is Class Counsel's duty to consider the class as a whole when negotiating a class action settlement to achieve a settlement that is fundamentally fair, reasonable, and adequate.

FACTUAL BACKGROUND

7. The underlying history of this litigation dates back many decades.

From 1967 to 1983, a subsidiary of Engelhard Corporation mined, milled and sold talc from the Johnson Mine, located in Johnson, Vermont. Some of the talc produced from that mine was sold under the brand name “Emtal Talc”, which was sold to various purchasers for use in making various commercial products.

8. BASF acquired Engelhard in 2006, renaming it BASF Catalysts, LLC.

9. Beginning in the early 1980s, plaintiffs began filing personal injury lawsuits (hereinafter the “Underlying Lawsuits”) against Engelhard (and later BASF) alleging that the company’s talc contained asbestos that caused them to develop asbestos related injuries. The suits often named a large number of other parties as defendants, and, as to talc product suppliers such as Engelhard, focused on talc that was sold and used for certain industrial and commercial purposes as a source of asbestos exposure. Many of these plaintiffs worked in rubber and tire plants or in plastic, paint and construction product manufacturing factories in which talc was used as a processing agent or as an ingredient. It merits emphasizing that the claims in the Underlying Lawsuits did not involve claims of exposure to any personal cosmetic products such as baby or body powder.

10. Engelhard retained Defendant Cahill Gordon & Reindel LLP (“Cahill”) to defend it in the Underlying Lawsuits as well as to oversee and

manage the many local firms retained to defend Engelhard in asbestos claims. Cahill so served as Engelhard's national counsel in asbestos litigation from the late 1970s to 2009.

11. The genesis of this lawsuit occurred in 2009, when I obtained evidence in an individual asbestosis personal injury case CPR was prosecuting in New Jersey state court (the "*Paduano*" case) which I and my CPR colleagues believed contradicted the claims made by Defendants in the Underlying Lawsuits that, in words or substance were, that Emtal Talc contained no asbestos and that there was no evidence that it ever did.

THE WILLIAMS CLASS ACTION

12. Following the discovery of that evidence in *Paduano* and further investigation by myself and other attorneys at CPR, five of the current six Representative Plaintiffs commenced this Class Action in this Court on March 28, 2011.

13. On August 3, 2011, a sixth Representative Plaintiff, Mrs. Roseanne Chernick, joined the matter upon the filing of the First Amended Class Action Complaint ("FAC").

14. The FAC asserted claims under New Jersey law for common-law fraud in various forms; fraudulent concealment (which encompasses New Jersey's stand-alone "spoliation" tort); violation of New Jersey's Racketeer Influenced and

Corrupt Organizations Act (NJ-RICO), N.J.S.A. § 2C:41-1, *et seq.*; a separate count for conspiracy to violate New Jersey's RICO statute; common law unjust enrichment, and common law conspiracy/concerted action. In addition, with respect to Cahill and co-defendant individual Cahill attorneys, the FAC pleaded a statutory claim for violation of New York Judiciary Law §487 (misconduct by attorney) ("N.Y.J.L. § 487 Claim").

15. From the outset of this litigation, the Representative Plaintiffs have been mindful of the nature and strength of their claims and the serious challenges and defenses that Defendants could and have raised, including the hurdles that Plaintiffs would need to overcome to obtain class certification. They all have been mindful of their fiduciary duty to the Class in prosecuting the suit and have worked hard and diligently in performing their parts in presenting the Class claims.

16. Defendants responded by filing motions to dismiss the FAC, claiming: (1) the District Court lacked jurisdiction over the case because of the *Rooker-Feldman* doctrine; (2) Plaintiffs had not adequately pleaded their claims; (3) the District Court lacked the authority to provide Plaintiffs their requested relief because of the Anti-Injunction Act and the principles of justiciability; and (4) the allegations failed to plead an actionable cause of action, especially in light of New Jersey's Litigation Privilege defense the Defendants claimed applied.

17. The District Court rejected the challenge to its jurisdiction, but otherwise fully granted the Motions to Dismiss. The Court ruled that Plaintiffs' fraud and fraudulent concealment claims were not actionable mainly because New Jersey's litigation privilege immunized Defendants from tort liability for alleged misstatements made in the Underlying Lawsuits. The District Court also found that Plaintiffs failed to plead an actionable RICO claim, reasoning that the Underlying Lawsuits were personal injury claims, and that Plaintiffs' requested relief would impermissibly undermine prior state court judgments in the Underlying Lawsuits. *Williams v. BASF Catalysts LLC*, No. 11-1754, 2012 U.S. Dist. LEXIS 175918 (D.N.J. Dec. 12, 2012). The Court additionally held that the FAC did not plead an actionable N.Y.J.L. §487 claim.

18. Plaintiffs appealed the decision dismissing the FAC to the Third Circuit, which reversed in part. It held that: (1) New Jersey's litigation privilege does not bar Plaintiffs' fraud and fraudulent concealment claims; and (2) the FAC adequately alleged the elements of fraud and fraudulent concealment under New Jersey law. The Third Circuit also affirmed in part, upholding the District Court's

decision to dismiss Plaintiffs' RICO claim.² *Williams v. BASF Catalysts LLC*, 765 F.3d 306 (3d Cir. 2014).

19. Following remand from the Third Circuit, the Representative Plaintiffs filed a 155-page Second Amended Complaint ("SAC") on July 16, 2015. This is the operative complaint in the case.

20. The SAC alleges that from 1984 to 2009, Engelhard and Cahill defended asbestos bodily injury cases in state and federal courts in part by (1) denying that Emtal Talc contained asbestos, (2) by denying the existence of any evidence that it did, and (3) by stating that no Engelhard employee had ever testified about the presence of asbestos in its talc.

21. The SAC alleges that Engelhard and Cahill employed this defense systematically for 25 years, allegedly causing thousands of dismissals, either voluntarily, by court order, or through Engelhard's participation in nuisance-value group settlements with other talc defendants.

² The Third Circuit also affirmed in part and reversed in part the Court's Opinion regarding the justiciability of certain of the FAC's claims for relief, which are not germane to the Class Action Settlement.

22. Defendants again filed motions to dismiss, which this Court denied. *Williams v. BASF Catalysts LLC*, No. 11-1754, 2016 U.S. Dist. LEXIS 46273, *23-27 (D.N.J. Apr. 5, 2016).

DISCOVERY PROCEEDINGS

23. After the Court denied the motions to dismiss the SAC, each side commenced extensive discovery initiatives. Numerous disputes arose over the scope of discovery and assertions of privileges. In view of the nature and number of disputed discovery issues the Court appointed retired New Jersey Supreme Court Justice Roberto A. Rivera-Soto as a Special Discovery Master (“SDM”) to manage discovery.

24. The parties then engaged in two-years of extensive and often hard-fought contentious discovery, resulting in more than 50 discovery motions being filed, over 300 pieces of meet-and-confer correspondence exchanged, the production and review of hundreds of thousands of pages of documents and ESI equivalents, and 28 depositions being taken, including depositions of the Representative Plaintiffs, some of the counsel in the Underlying Lawsuits, and employees and other representatives of BASF and Cahill.

25. Through all this, several discovery disputes stand out. One of the first significant disputes in the case concerned the scope of discovery. The parties vigorously disagreed about its extent, with Defendants arguing that they had a

right to delve into the merits of the Underlying Lawsuits, including discovery into plaintiffs' injuries and asbestos exposure and into their original attorneys' files and confidential attorney-client communications and work-product. The Representative Plaintiffs moved for a protective order, arguing that Defendants by their alleged conduct in the Underlying Lawsuits had forfeited the right to such discovery and that such was not relevant to the wrongdoing alleged in Plaintiffs' SAC. Several rounds of briefing and argument took place. Ultimately, the Court rejected Plaintiffs' arguments, in part, on the scope of discovery. *Williams v. BASF Catalysts, LLC*, No. 11-1754, 2017 U.S. Dist. LEXIS 122053, *30, 33 (D.N.J. Aug. 3, 2017). Pertinent here was the Court's ruling that the "scope of discovery will focus on the alleged wrongful conduct and any alleged harm following from that conduct" including "why Plaintiffs settled or dismissed their underlying claims." *Id.* at *31. The Court also ruled that "[t]o fully explore this issue, Defendants will be entitled to discover what Plaintiffs and their counsel knew, and were told, and whether any knowledge, or lack thereof, contributed to Plaintiffs' decisions on resolving the underlying case." *Id.* That inquiry, the Court explained, permitted finding a limited waiver of Plaintiffs' attorney-client privilege and therefore warranted review of the files and correspondence related to the Underlying Lawsuits. *Id.* at *32-33.

26. Another overarching and hotly litigated dispute concerned Plaintiffs' motion to compel the production of BASF's allegedly privileged documents under the crime-fraud exception and for other reasons. Following briefing on the motion and several days of oral argument on the threshold inquiry of whether Plaintiffs had made out a *prima facie* showing that Defendants engaged in a crime or fraud, the Special Discovery Master stated that he would like more information on the scientific testing and ordered that the parties provide expert testimony about the testing in the record. Plaintiffs objected to that order, sought an emergency stay of and appealed the SDM's order to the District Court. On the other hand, the SDM ruled that certain internal testing documents BASF withheld on claimed privileged grounds were discoverable. The Defendants appealed this ruling to the District Court. Both Plaintiffs' and BASF's appeals remained pending when, on June 26, 2018, Chief Judge Linares stayed the Action and ordered the parties to resume and continue settlement discussions before Magistrate Judge Dickson. ECF No. 602.

**MEDIATION AND NEGOTIATION OF THE SETTLEMENT
AGREEMENT AND ATTORNEYS' FEES PROVISION**

27. This case did not resolve itself readily or easily. Both sides were resolute in their diametrically opposed views and positions of fact and law. It therefore ultimately required four separate rounds of arm's length and good-faith efforts at mediation before the parties reached the present proposed settlement.

28. The parties first appeared before retired federal Judge Layn R. Phillips for mediation on February 27, 2015. Mediation resumed in April 2016, after the Court denied Defendants' motions to dismiss the SAC. Neither effort resulted in a settlement and the parties resumed active litigation.

29. The third round of negotiations occurred after Chief Judge Linares stayed this litigation and directed the parties to appear before the Hon. Joseph A. Dickson, U.S.M.J. to continue settlement discussions. During this effort the parties made progress with Judge Dickson's assistance toward the broad outlines of a potential settlement. With this progress the parties agreed to return to Judge Phillips for mediation. Following two very intense, arms-length sessions with Judge Phillips conducted in the fall and winter of 2018, the parties reached an accord on the elements of a settlement in January of 2019.

30. Class Counsel had determined at the outset of negotiations that in order to be acceptable, any class action settlement would need to compensate the members of the Settlement Class fairly and adequately for the injuries attributable to the alleged wrongful withholding of evidence that Emtal Talc contained asbestos. Additionally, any settlement structure would also need to consider the differing severity of underlying illnesses caused by asbestos exposure, that compensation to the members of the Settlement Class has been delayed for

decades and the fact that records and other proof in many instances were likely no longer readily available and, in some cases, not available at all.

31. To assist them in structuring a settlement, Class Counsel retained Verus, LLC, a leading Section 524(g) asbestos trust and mass tort settlement claims administrator and consultant firm. Verus was tasked with estimating the size of the Class and devising models of compensation which would reflect the values of the alleged injuries that had been at issue in the Underlying Lawsuits.

32. During the litigation, Class Counsel in addition engaged experts to provide opinions and guidance on numerous subjects: epidemiology and public and occupational health (David Egilman, MD, MPH); the health effects of asbestos and talc exposure (Arthur L. Frank, MD); mineralogy and geochemistry (William Glassley, PhD); testing of Emtal Talc samples (James Hubbard, MsD of Georgia Tech); asbestos claim prosecution (Gene Locks, Esquire), estimation of the asbestos claim transactional costs saved by Engelhard/BASF as a result of the alleged fraudulent concealment, fraud and conspiracy (Daniel Myer, Verus), and estimation of what Engelhard and BASF would have had to pay to defend and resolve asbestos bodily injury claims during the period from 1984 to 2009 had Defendants not engaged in the alleged fraudulent concealment, fraud, and conspiracy (Mark Peterson, PhD).

33. Based on Class Counsel’s collective and long experience in litigating and settling asbestos claims, class actions and other complex litigation, and armed and informed by our expert team, Class Counsel fought hard and went back and forth with Defendants on many issues during the settlement negotiations, including: the size of the settlement fund; whether it would be non-reversionary; categories of disease levels; monetary award values; necessary proofs for class membership; the scope of the released claims; and payment of costs of settlement administration and class notice, among other things. None of these issues were simple; none were easily resolved. The parties made many demands, proposals, and counter-demands during the settlement discussions.

34. As attested to by Judge Phillips in his declaration supporting the Settlement, throughout the three rounds of mediation before him, he observed that “the parties vigorously asserted their respective positions on all material issues” and that these “discussions were often difficult, though both sides remained respectful and professional.” Exhibit E. Judge Phillips further stated his view that the parties were “represented by highly experienced, competent, and committed counsel” who were “extremely well-versed in the complex issues involved in this class action and were therefore able to appreciate the merits of the case and risks of continued litigation.” *Id.*

THE SETTLEMENT AGREEMENT'S TERMS

35. Ultimately, the parties reached agreement on a settlement which was memorialized in the Term Sheet dated as of January 25, 2019. Over the next 13 months, the parties negotiated the terms of the Settlement Agreement dated March 13, 2020 (requiring at time the assistance of Magistrate Judge Dickson to get beyond impasses regarding key terms), while Class Counsel also worked with Verus and other experts to devise and draft the Plan of Distribution. The parties also engaged BrownGreer to serve as notice agent and to assist in creating the class notice mailing list and perform other tasks in connection with the Notice Plan approved in the Preliminary Approval Order.

36. The Settlement establishes a non-reversionary Settlement Fund of \$72,500,000 to be paid by BASF and Cahill. BASF and Cahill will also pay \$3,500,000 for administrative expenses incurred in designing, establishing and carrying out the Notice Plan and the Plan of Administration.

THE PLAN OF DISTRIBUTION

37. In developing the Plan of Distribution for the proposed Settlement Fund, Class Counsel were sensitive to two factors. First the need to devise a distribution scheme that considered and addressed differences in the degree of severity of asbestos disease suffered among the Class Members (malignant diseases versus non-malignant diseases, for example). Second, the need to

compensate Class Members for the alleged denial of their right to fairly litigate the Underlying Lawsuits and the lengthy passage of time that had occurred since the Class Members' Underlying Lawsuits were dismissed. The time delay greatly impacted a Class Member's access to information, including proof and documents generally required to establish a payable claim under many asbestos § 524(g) claim programs. For example, during this time many Injured Persons passed away. Many of the lawyers who filed Underlying Lawsuits have retired or died with their practices closed down. Some of those lawyers had long left the law firm they were at when they handled the suits and thus had no records. Records also were no longer available from lawyers or courts due to being discarded or destroyed during storms such as Hurricane Katrina. Likewise, medical records were no longer available from the health care providers involved as some had died or moved to locations unknown. Thus, the Plan had to equitably deal with the fact that many Class Members (or their next of kin where the Injured Person had died) no longer had access to the evidence and information ordinarily needed to make a claim to a settlement trust or claims facility. Adding to this challenge was the fact that in many instances, the evidence to support an asbestos claim against Engelhard/BASF, such as product identification, had never been developed in the Underlying Lawsuits because of the perceived futility in pursuing asbestos injury cases against a defendant whose product was represented to be asbestos free.

38. Given the passage of time and the nature of the claims, the Plan of Distribution strikes a fair balance between the required procedures to receive an award under the Settlement and ensuring the integrity of the claim administration process with a robust anti-fraud program. To start, the Plan provides all eligible class members upon establishing their class membership a base compensation payment under Part A of the Plan for the Primary Claimant and a base payment for all Derivative Claim payments. It then goes on under its Part B compensation to provide additional injury-based compensation awards to eligible class members based on level of asbestos disease sustained, turning on proof of the highest level of asbestos disease progression suffered by the injured person that could be established by either credible traditional medical proof submitted to the Settlement Administrator or by certification of a disease award adjudication from a Qualified Asbestos Trust (“QAT”). POD § 3.2.4.1.

39. The QAT disease certification is a central feature of the Plan and is designed to overcome the inability of some claimants to provide medical records and other proof of disease. The design of the Plan for the same reasons does not require claimants to provide proof of product identification or exposure duration. Rather, base eligibility for compensation under the Plan looks to the Underlying Lawsuit’s pleadings, discovery and other sources of credible information concerning the claim being made in the Underlying Lawsuit to determine if the

subject Injured Person's Underlying Lawsuit was "asserting a good faith, credible asbestos injury claimed based on an injury believed to be caused by exposure to Emtal Talc." POD §3.1.3.8. In other words, eligibility to participate in the distribution was to be determined on the basis of what was being claimed by or on behalf of an Injured Person in the Underlying Lawsuit when it was pending; not on what the claimant could ultimately prove then or now.

40. The Plan also provided other administrative elements designed to ease the amount of information needed to submit a claim where the litigation's discovery records and databases could readily determine eligibility. To help in determining who eligible class members are, the Plan of Distribution called for the Administrator (Verus) to examine information and databases obtained during discovery, including information and data provided by Defendants and obtained from counsel representing plaintiffs in the Underlying Lawsuits, to compile a list of presumed Class Members. Under Section 3.1.3 of the Settlement Agreement, class membership is presumed of any person identified on this Presumed Class Member List or the personal representative, spouse, or heir of a person identified on the Presumed Class Member List. These Class Members were not required to provide documentary evidence showing they met the Plan's eligibility criteria, including the documentary proof of filing of suit that met the Good Faith Credible Emtal Talc Claim Requirement under POD §3.1.3.8 and the subsequent dismissal

of the suit. Those not on the presumed eligible list were required to provide documentary proof these eligibility requirements.

41. The Plan of Distribution also addressed the problem of unavailable medical proof by looking to and accepting a previous claim adjudication by a Qualified Asbestos Trust as proof of asbestos injury. Under this Plan feature, claimants may establish both the existence and level of a qualifying asbestos disease by providing to the Settlement Administrator a certified Qualified Asbestos Trust Adjudication. POD § 3.2.4.4.1. After the Administrator obtains the certification for a claimant upon receiving a signed consent form, the Settlement Fund will accept and apply the highest disease level certified by a Qualified Asbestos Trust, even if that level is higher than what the claimant requested in his or her claim submission. The POD further provides that upon a claimant's request, the Settlement Administrator will poll each of the QAT's to determine if an adjudication exists where a claimant does not know if there is one.

42. The Plan also addresses situations where locating suit papers is a problem by requiring the Administrator to conduct searches of the Action's discovery documents on behalf of a bona fide claimant to determine if documents needed to prepare and submit a complete claim package exist and to provide electronic copies.

43. For those claimants that chose or were unable to rely on a prior Qualified Asbestos Trust adjudication, such claimants were then required to establish their qualifications for Part B compensation by submitting meaningful and credible medical proof of the asbestos disease claimed.

**PRELIMINARY APPROVAL OF THE
SETTLEMENT AGREEMENT**

44. On July 23, 2020, Class Counsel submitted the Class Action Settlement Agreement to the Court for preliminary approval along with a Motion for Preliminary Approval of the Class Action Settlement Agreement and Conditional Class Certification ECF No. 621.

45. On September 3, 2020, following review of the Settlement Agreement, Plaintiffs' motion and the accompanying supporting papers, the Court entered a Preliminary Approval Order granting (1) preliminary approval of the Settlement Agreement; (2) conditional certification of the Settlement Class requested in the motion; (3) the appointment of Kimberlee Williams, Gayle Williams, Marilyn L. Holley, Sheila Ware, Donnette Wengerd, and Rosanne Chernick as representatives for the Class; (4) the appointment of myself as Lead Class Counsel along with Stewart L. Cohen, Harry M. Roth, Michael Coren, Robert L. Pratter, Eric S. Pasternack, Jared M. Placitella and the law firm of Cohen Placitella & Roth, P.C., as Class Counsel; (5) preliminary approval of the

proposed Plan of Distribution, including commencement of its administration; (6) approval of the proposed Notice Plan; (7) the appointment of the Hon. Marina Corodemus, J.S.C. (Retired) to the position of Settlement Trustee and Special Master under Federal Rule of Civil Procedure 53; (8) the appointment of Verus LLC as the Settlement Administrator; (9) the appointment of Edgar C. Gentle, III, Esq. as the Lien Administrator; (10) the appointment of BrownGreer PLC as the Settlement Notice Agent. The Order further (a) set certain deadlines regarding notice to the putative Class and implementation of the proposed Plan of Distribution; (b) scheduled the Fairness Hearing; (c) established the Settlement's Cost Fund and Settlement Fund and appointed PNC, N.A as the repository for the funds; and (e) stayed the *Williams* Action except as may be necessary to implement the Settlement and Plan of Distribution or to comply with the Preliminary Approval Order. ECF No. 623.

POST PRELIMINARY APPROVAL ACTIVITIES

46. Class Counsel's work on behalf of the class diligently continued following the Court's Preliminary Approval of the Settlement Agreement and proposed Plan of Distribution as a number of settlement administration matters required Class Counsel's close involvement.

47. Working with the Verus and BrownGreer to execute the tasks necessary to ramp up the claims administration and notice processes was the first

order of business. An unusual aspect of the Settlement Agreement in this case was that the entire claim submission and claim adjudication process by the Administrator essentially needed to be completed prior to the Fairness Hearing as certain walk-a-way rights depended on the outcome of the administration. Consequently, immediately following preliminary approval, Class Counsel needed to negotiate and/or obtain execution of the following agreements required under the Settlement Agreement and Preliminary Order: the Settlement Trustee's agreement with Verus for its administration services; the Settlement Trustee's agreement with Gentle, Turner, Sexton & Harbison, LLC for Lien Administrator services; documents regarding publication authorization to BrownGreer for notice services; and execution of the court approved escrow agreements with PNC Bank. Once the various administrative agreements were in place, Class Counsel then turned its attention to working with Verus' claims personnel to ramp up the administration processes to full scale operation and overseeing BrownGreer in implementing the Notice Plan.

48. Throughout the entire claim submission filing period, Class Counsel were accessible and responsive to requests for information by class members and attorneys representing claimants. Class Counsel fielded numerous telephone calls from potential class members and attorneys regarding the class action, the settlement and the claims processes. Additionally, on request, Class Counsel

assisted *pro se* claimants in locating or obtaining information and documents needed to complete claim applications that required detailed knowledge of the discovery and various litigation forums beyond what Verus' claim staff possessed.

49. During the notice and claim filing period, Class Counsel also conducted outreach efforts to many of the plaintiff law firms, or their current successors where known, who had originally represented Injured Persons in the Underlying Lawsuits to inform them of the settlement, the deadlines and the availability of information and resources to assist their clients should it be needed as well as to encourage them to contact former clients and provide assistance to them if contacted. These efforts were well received by the asbestos claimant bar and enabled Class Counsel to monitor responses to the notice and the Plan of Distribution. These outreach efforts also opened lines of communication from which Class Counsel could learn about unforeseen impediments affecting class members' ability to timely file and complete claims.

50. In particular, the Covid-19 Pandemic generated a number of logistical challenges for claimants during the administration such as COVID- 19 related difficulties that arose in obtaining documents and manually signing forms caused by U.S. mail service delays and difficulties in obtaining estate papers in many jurisdictions due to probate or surrogate office closures, limitations or restrictions.

51. Class Counsel together with the Settlement Trustee, Verus and Defendants' counsel worked on solutions to these challenges. Some of the logistical issues were resolved through extending deadlines the Court had established in the Preliminary Approval Order. Based on feedback received from potential Settlement Class Members and counsel representing potential Settlement Class Members, Class Counsel and Defendants jointly petitioned the Court to extend the following deadlines:

Deadline	ECF No. 623 Preliminary Approval Order	ECF No. 631	ECF No. 635
Claims Filing Deadline	January 15, 2021	March 16, 2021	March 16, 2021
Objection Submission Deadline	December 16, 2020	February 16, 2021	
Opt-Out Deadline	December 16, 2020	February 16, 2021	
Opt-Out Revocation Deadline	December 30, 2020	March 2, 2021	
Document Submission Deadline	February 19, 2021	April 20, 2021	May 20, 2021
Objection Response Deadline	April 30, 2021	June 29, 2021	July 30, 2021
Motion for Final Approval	June 2, 2021	June 29, 2021	August 19, 2021

52. BrownGreer provided notice of these extended deadlines to potential Class Members and Verus posted the revised dates on the Settlement website: www.emtaltalcsettlement.com.

53. To help alleviate the difficulties Class Members or their counsel encountered in providing signed forms from claimants, Class Counsel, Defendants and the Settlement Trustee had Verus add an electronic signature feature to the Settlement Fund's Website allowing claimants to manually sign their names electronically on the forms required by the Settlement agreement and Plan.

54. In response to the reports of probate, surrogate and other public record offices being closed or limited in their access or services, Class Counsel and Verus researched and developed a Court Approved Procedure that provided permission for "Limited Purpose Representatives" to submit claims relating to deceased Underlying Lawsuit plaintiffs when an estate was not available, which CAP the Settlement Trustee, with the consent of the Defendants, adopted and entered pursuant to her authority as court appointed Special Master. See ECF No. 630. The CAP amended the Plan of Distribution to authorize "Limited Purpose Representatives," which the CAP provided a process and a simple form to be appointed, submit claims on behalf of deceased Injured Person's heirs where an estate had not been opened or had been closed, subject to a restriction that if the

claim was eventually approved and Settlement Fund benefits payable, the Settlement Fund would not distribute any monies awarded on the claim until the Settlement Administrator is presented with letters of testamentary or administration of the duly appointed personal representative of the Injured Person's estate.

55. During this claims administration period, Class Counsel additionally reviewed the Administration's budgets and Cost Fund expenditure reports prepared by Verus for the Settlement Trustee. Class Counsel also attended the Settlement Trustee's periodic status meetings and, at her request, handled the Cost Fund replenishment requests to Defendants that were needed to maintain the Administration's operations.

**BROWNGREER'S ADMINISTRATION OF THE
CLASS NOTICE PROGRAM**

56. On August 3, 2020, BrownGreer mailed the required CAFA notice to the required U.S. Attorney General Offices and the appropriate governmental officials for all fifty states, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. Exhibit D. On September 20, 2020, BrownGreer mailed notice of the Settlement to 9,360 Presumed Living Class Members, and 27,747 Presumed Living Relatives of Deceased Class Members in accordance with the approved Notice Plan. In his

Declaration, attached to the Motion for Final Approval of the Settlement as Exhibit D, Orran Brown detailed the methodology used to identify Injured Persons and their relatives, as well as the scope and reach of the Notice which, yielded over 84% of Presumed Living Class Members or their attorneys in the Underlying Lawsuits and at least one Relative of deceased Class Members.

**VERUS LLC'S ADMINISTRATION OF THE PLAN OF
DISTRIBUTION CLAIMS PROGRAM**

57. I have attached to my declaration the declaration by Mark Eveland of Verus, LLC, describing all of its activities as the Settlement Administrator in the claims administration process.

58. Among other things, Verus, upon entry of the Preliminary Approval Order, launched the Settlement's official website, www.emtaltalcsettlement.com, to provide information on the Settlement to potential Class Members. The content of the website included copies of the *Williams* case's pleadings, pertinent court orders, settlement claim forms, and the long form notice.

59. The official Settlement Website also allowed Settlement Class Members to complete and submit online their claim submission forms and upload supporting documents.

60. In addition to the public website, Verus also established an electronic filing portal and process for attorneys to use for electronic filing of claims as provided in the POD.

61. Along with the Settlement Website, Verus together with BrownGreer operated call centers and Verus accepted and responded to inquiries by mail and email. As I mentioned above, Class Counsel also fielded phone calls and emails from potential Settlement Class Members asking about the Settlement and their eligibility for an award under the POD.

CLASS MEMBERS' RESPONSE TO SETTLEMENT

62. The reaction of the Class to the Settlement has been extremely favorable. To start, no potential Settlement Class Member has objected to the settlement nor have any Class Members validly opted out of the Settlement.³

³ BrownGreer and Verus received correspondence from two class members about opting out of the settlement who have since advised Verus they changed their minds and filed claims. An opt out was received from a derivative claimant of an estate however, the primary claimant of the estate had already timely filed a claim. A fourth letter asking not to recover from the class was submitted by a family member who was neither a primary nor derivative claimant and thus not a class member.

63. As of June 11, 2021, the Settlement Administrator received 9,364 claims with 8,052 of those claims having been adjudicated as qualified for Part A compensation.

64. The total amount to be paid to Part B claims is \$59,749,984.37, with these amounts being paid to each Part B disease level as follows :

Table 1: Determined Compensation Level of Part B Claims			
Disease Level	# of Claims Approved	\$ Per Claim	Total
Level 1 Claim (Non-malignant asbestos disease other than severe asbestosis)	4,468	\$3,075.93	\$13,743,255.24
Level 2 Claim (Malignant asbestos disease other than Mesothelioma or Level 3 Lung Cancer)	127	\$27,683.39	\$3,515,790.53
Level 3 Claim (Either: (a) primary lung cancer with evidence of underlying bilateral asbestos-related non-malignant disease; or (b) severe asbestosis)	394	\$61,518.66	\$24,238,352.04
Level 4 Claim (Mesothelioma)	69	\$264,530.24	\$18,252,586.56
Total	5,058		\$59,749,984.37

65. Based on my extensive experience in complex litigation and my familiarity with this litigation in particular, including Defendants' potential

defenses, I firmly believe that the proposed Settlement is fundamentally fair, reasonable, and adequate because it will provide immediate and substantial benefits to long-deserving Settlement Class Members and otherwise meets all the requirements for final approval as discussed at length in the Motion for Final Approval and supporting Memorandum of Law.

**PETITION FOR ATTORNEY’S FEES, REIMBURSEMENT OF
LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE
AWARDS**

66. Class Counsel submitted its Petition for Approval and Grant of Awards of Class Counsel’s Attorneys’ Fees, Class Counsel’s Attorneys’ Fees, Class Counsel’s Reimbursement of Litigation Expenses and Class Representative Service Awards on October 20, 2020. ECF No. 628. There have been no objections, nor any opposition filed to this Petition.

67. Under the Settlement, no portion of the Settlement Fund will go toward the payment of Class Counsel’s attorney’s fees or litigation expenses. Instead, Defendants have agreed to pay up to \$ 22.5 million in attorney’s fees and \$ 1.2 million in litigation expenses to Class Counsel in addition to funding the \$ 72.5 million Settlement Fund and the separate, additional \$ 3.5 million Cost Fund. *See* Exhibit A, Settlement Agreement, § 13.1. This agreement was negotiated at arms-length with the Defendants and only obtained after all the terms of the Settlement had been agreed upon by the parties.

68. Class Counsel's fee request is justified by the Settlement's amount and terms, which resulted from the quantity and quality of Class Counsel's professional work over the last eleven years. As described in the memorandum in support—and further evidenced by the number and complexity of the pleadings—Defendants with their significant resources and professional legal talent contested every element of this case, which required Class Counsel to expend substantial resources and stamina to advance the interests of the Class.

69. Class Counsel undertook the factual investigation necessary to bring the Action and successfully navigated the complex and often novel procedural and substantive legal issues to bring about the results obtained. During the litigation, Class Counsel reviewed and analyzed hundreds of thousands of pages of scanned documents or ESI equivalent that the parties and various subpoenaed third parties produced during discovery. In addition to propounding and responding to numerous sets of interrogatories, document requests, and requests for admissions, there were twenty-eight witnesses deposed at various locations in and outside New Jersey. Class Counsel either took these witness depositions or prepared and presented the witness being deposed. Besides briefing many motions before the District Court and pursuing a successful appeal before the Third Circuit, Class Counsel briefed more than 50 motions before the Court-appointed Special Discovery Master. And once the terms of the Settlement were agreed upon in a

Term Sheet following extensive mediation sessions, Class Counsel also negotiated the Settlement Agreement with the Defendants and created the Plan of Distribution and claim procedures to fairly compensate eligible Class Members for the rights they lost to litigate the Underlying Lawsuits with full information about Emtal talc, considering the array of injuries they sustained which were the subject of the Underlying Lawsuits. In addition, Class Counsel performed the post Preliminary Approval services I described above.

70. Altogether, if this Petition is granted, Class Counsel will have secured \$ 99.7 million in economic benefits for the Class. The fee request meets every element of the percentage of recovery standard and will not diminish the Class Members' recovery in this Settlement. So too, the Memorandum of Law presents the alternative lodestar method as a cross-check of the reasonableness of our request.

71. Throughout this litigation CPR's lawyers and professional staff recorded and documented their time. In presenting the information on the firm's time and expenses, I have relied on my firm's time and expense printouts prepared and maintained by the firm in the ordinary course of business or upon a lawyer's review of their records and the case's files to make a good faith, reasonable calculation of the time they devoted to the litigation tasks and projects they were assigned and handled.

72. As both Lead Class Counsel and the CPR partner involved throughout the litigation, in my opinion, the time reflected in the lodestar calculations and statement of expenses provided in this declaration, for which payment is sought, are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. Given the pace and complexity of the issues here, with many issues being litigated simultaneously, Class Counsel worked efficiently and without unnecessary duplication. In addition, Defendants were represented by two highly able national defense firms and several other prominent regional firms which often required Class Counsel to employ all the resources at its command to represent the Class's interests in the many disputes which arose in this case. Class Counsel's litigation expenses have been billed separately and, as such, are not duplicated in the lodestar. The time spent on the fee application is not included in the lodestar.

73. From the case's inception to August 18, 2021, the lawyers and professional staff of Cohen, Placitella & Roth have devoted at least 22,344.6 hours to this matter.

74. The hourly rates for the attorneys, paralegals, law clerks, and legal assistants of Cohen, Placitella & Roth, PC, range from \$925 an hour for the most senior partners to \$190 an hour for legal assistants. I have attached as Addendum A the hours recorded by Class Counsel and the rates for each, along with the

aggregate hours and lodestar of all CPR professional personnel who worked on the matter during the case.

75. Based on my experience in litigating complex class actions such as this over my career, I believe that CPR's professional staff rates are reasonable, and in line with the prevailing rates allowed in class actions within the Third Circuit.

76. This results in a lodestar of \$18,116,288.50, which represents a multiplier of 1.24.

77. Class Counsel seeks litigation cost reimbursement for 1,041,094.46, which is the current amount of litigation expenses incurred in connection with the prosecution of this litigation as of this application. The expenditures are broken down into categories in Addendum B. All expenses incurred are reflected on the books and records of CPR which are available to the Court for *in camera* inspection should the Court desire to review them.

78. As BASF and Cahill have agreed to pay any Class Counsel litigation expense reimbursement award by the Court up to \$1.2 million, a reimbursement award in the above requested amount will not diminish the Class Members' recovery.

79. Finally, Petitioner requests that the Court award incentive awards of \$ 50,000 each for a total of \$300,000 for the Class Representatives to compensate them for the valuable and dedicated services they provided to the Class and the burdens borne by them.

80. The Class Representatives have been actively involved in all phases of the litigation. They searched for and provided information to Class Counsel to prepare the initial and amended complaints, other pleadings and for discovery. They responded to multiple sets of interrogatories, requests for documents, and requests for admissions, and prepared for and attended long and probing depositions into the underlying litigation matters involving the injury and deaths of their loved ones. They conferred with Class Counsel regularly through in person meetings, telephone calls and written correspondence on the status of the litigation and its strategy throughout its development, litigation, and mediation phases. Without the Class Representatives' perseverance over the last 11 years, it is unlikely that the members of the Class would receive any of the compensation to be afforded to them on final approval of the Settlement.

81. In my view, the contributions of the Class Representatives have far exceeded those of the typical class representative and justify the requested incentive awards.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Christopher M. Placitella
Christopher M. Placitella

Date: August 19, 2021

ADDENDUM A**Lodestar Report**

NAME	HOURS	HOURLY RATE	Lodestar AMOUNT
PARTNERS:			
Christopher M. Placitella	4,349.3	\$925	\$4,023,102.50
Stewart L. Cohen	1,012.9	\$925	\$936,932.50
Harry M. Roth	1,835.4	\$925	\$1,697,745
Michael Coren	4,660.0	\$925	\$4,310,500.00
Robert L. Pratter	1,549.5	\$925	\$1,433,287.50
William Kuzmin	54.6	\$850	\$46,410.00
Jillian A.S. Roman	54.8	\$850	\$46,580.00
ASSOCIATES:			
Jared M. Placitella	3,797.9	\$700	\$2,658,530.00
Eric S. Pasternack	2,357.9	\$700	\$1,650,530.00
James G. Begley	37.4	\$700	\$26,180.00
Elizabeth Amesbury	708.4	\$475	\$336,490.00
Silvio Trentalange	702.2	\$475	\$333,545.00
Kaitlin J. Clemens	259.4	\$475	\$123,215.00
Patrick Cullen	7.5	\$475	\$3,562.00

Debra Goodman	475.0	\$700	\$332,500.00
Timothy Peter	48.9	\$475	\$23,227.50
FELLOWS			
Stephen Dodd	30.7	\$309	\$9,486.30
PARALEGALS			
Kacy Savage	4.5	\$309	\$1,390.50
Rebecca Sweeney	1.5	\$309	\$463.50
Kristen Varallo	396.8	\$309	\$122,611.20
Totals	22,344.6		\$18,116,288.50

ADDENDUM B**Cost and Expense Report
(Inception through August 19, 2021)**

Deposition, Videography and Hearing Transcript Charges	\$75,523.68
Expert and Consultant Fees	\$345,067.75
Travel, Lodging and Meals	\$103,224.80
Copying	\$30,745.02
Postage	\$94.50
Courier Services	\$5,041.11
Court filing fees and charges; Summons and Subpoena Process Service fees	\$5,089.19
Investigative Costs	\$20,086.72
Mediation	\$41,225.01
Miscellaneous	\$27.50
Document Management, Document Review, and Information Technology Vendor Charges	\$184,590.68
Special Master Fees	\$230,378.50
Total	\$1,041,094.46

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KIMBERLEE WILLIAMS, et al.

Plaintiffs,

vs.

BASF CATALYSTS LLC, et al.

Defendants.

No. 2:11-cv-01754 (ES) (JAD)

CIVIL ACTION

**DECLARATION OF MARK
EVELAND**

I, MARK EVELAND, being of majority age do pursuant to 28 USCS § 1746 declare as follows:

1. I am employed with Verus LLC (“**Verus**”) as Chief Executive Officer, which I co-founded in 2003. I have been directly involved in the handling, administration, analysis, and resolution of personal injury claims since 1993. Over the years I personally provided claims handling and claims management services to a wide array of clients, including various defendants, bankrupt corporations, and law firms nationwide representing defendants and insurance carriers in mass tort litigation. Verus also counsels and provides analytical and claim processing services to plaintiffs-oriented firms and steering committees in mass tort matters. In the course of my professional activities, I have personally been involved in the design and implementation of hundreds of mass tort settlements involving numerous law firms and defendants across the country. Over the years I have been doing this work I developed a broad knowledge of mass tort litigation and believe I have a full

understanding of the factors that lead to the successful resolution of claims through an effective settlement plan design.

2. Verus is a claims administration and litigation support services provider serving parties, law firms and institutions in the mass tort field. The firm provides a full suite of services, including the administration of approximately twenty-five Section 524 (g) asbestos trusts, asbestos claims and mass tort settlement administration, case management and medical review services, business and advisory services, analytics and document management services. The firm is located in Princeton, New Jersey. While known and well regarded for its work in the asbestos mass tort field, Verus also provides litigation support services to law firms working on other types of mass torts involving toxic exposures, including defective medical devices and dangerous drugs.

3. In its capacity as a third-party claims administrator, Verus is frequently tasked with developing and implementing policies, procedures, and software systems for the intake, review, and settlement of asbestos personal injury claims, as well as claims resolution systems for other mass tort matters.

4. Since 2003, Verus has resolved over five million personal injury claims filed with our asbestos bankruptcy trust clients. These clients consist of a diverse mix of former asbestos defendants, including raw fiber suppliers; installers of asbestos-containing products; distributors of asbestos containing products; manufacturers of thermal insulation, insulating cements, joint compounds,

construction materials, cement-asbestos pipe, gaskets, friction products, and many other products.

5. Prior to the entry of the Order granting preliminary approval of the Settlement, Verus identified potential class members from records and databases for the purpose of developing a class notice mailing list and to facilitate the claims administration process, including compiling a presumed class member list required under the Plan of Distribution in this matter. Verus relied on several sources of data and information to identify class members, including:

- (a) Information obtained in discovery in the Williams Action that identified plaintiffs who filed cases against Engelhard Corporation or later BASF Catalysts LLC after it acquired Engelhard that alleged an asbestos injury caused by exposure to Emtal Talc;
- (b) Datasets supplied to Verus on a confidential basis by law firms that had previously represented individual plaintiffs in Underlying Lawsuits against Engelhard or BASF based on Emtal talc, such as electronic claimant data supplied by Bevan and Associates;
- (c) Complaints filed in Mississippi and Texas against Engelhard/BASF in which either hundreds or thousands of plaintiffs were named and joined into a single massive suit, from which Verus was able to extract names and other identifying information from certain asbestos injury claimants.

6. After compiling and analyzing the above information, Verus identified 19,128 potential Settlement Class Members. Verus provided the information on these potential Settlement Class Members to the court appointed Notice Agent, BrownGreer, for inclusion in the mailing list and notice.

7. As mentioned, the work done to identify potential Settlement Class Members also contributed to the creation of the Presumed Class Member List. Pursuant to Section 3.1.3 of the Settlement Agreement, class membership is presumed of any person identified on the Presumed Class Member List or the personal representative, spouse, or heir of a person identified on the Presumed Class Member List.

8. Following Verus' official appointment as Settlement Administrator, we implemented programs to facilitate the intake and review of claims submissions. Verus launched a public website, www.emtaltalcsettlement.com, to provide information and other resources to potential Settlement Class Members and inviting them to submit claims. Through the website, Settlement Class Members could complete and submit their claim submission forms and obtain related certifications and authorization forms.

The Settlement Website included the following sections: (1) Home, (2) Resources for Filing Claims, (3) Resources for Law Firms (this landing page was removed after the Claims Filing Period was over), (4) Settlement Documents, (5) FAQ, (6) Contact Us, and (7) File a Claim. Copies of these pages of the Settlement Website are attached as Exhibit A.

- (a) The “Home” page of the website served as its primary landing page and provides introductory and summary information regarding the settlement. From that page, visitors to the website can route easily to any of the site’s other pages.
- (b) The “Resources for Filing Claims” page provides claim submission forms, claims certification forms, and lien forms. In addition to the standard claim form, the “Resources for Filing Claims” page includes an alternative claim form that could be used if the injured person in an Underlying Lawsuit is deceased, and no estate is open. That page also includes a pamphlet describing the type of documentation claimants need to support their claims, a list of ineligible diagnosticians, and a copy of the Court’s December 16, 2020 Court Administrative Procedure (CAP) on Claim Submissions involving deceased Primary Claimants.
- (c) The “Resources for Law Firms” page includes: (1) the Law Firm Registration Form used by plaintiff law firms to apply to file claims for their clients, (2) the Electronic Filer Agreement for law firms that wish to file claims online, (3) a W-9 Form, and (4) instructions for uploading multiple claims to the online claim filing platform. This page also contains several certification forms that claimants could submit in support of their claims. Finally, the “Resources for Filing Claims” page contains several medical lien forms.

- (d) The “Settlement Documents” page includes: (1) the Petition for Approval of Attorney’s Fees, (2) the Consent Order Amending Deadlines, (3) the Long Form Notice, (4) the Motion for Preliminary Approval, (5) the Preliminary Approval Order, (6) the Settlement Agreement, and (7) the Plan of Distribution.
- (e) The “Frequently Asked Questions” page includes answers to several questions in plain English such as, “How do I know if I am a Class Member?”
- (f) The “Contact Us” page includes contact information that visitors of the Settlement Website could use to obtain information on filing claims.
- (g) The “File a Claim” page brings visitors to the Settlement Website to a portal they could use to submit claims to the Settlement Fund.

9. As of July 28th, 2021 the Settlement Website had received 7,119 unique visitors, with 827 using the website to create claims.

10. In addition to providing claim submission forms and the related certification and authorization forms online through the Settlement Website, Verus also allowed Settlement Class Members to request the documents by mail, email and by phone call to the Settlement Program’s toll-free telephone line.

11. Verus accepted completed claims submissions forms through the Settlement Website’s claim portal, as well as by email and mail to Emtal Talc

Settlement c/o Verus LLC, Administrator, 3967 Princeton Pike, Princeton, NJ 08540.

12. Verus dedicated five full-time staff to reviewing claims, including four Claim Processors and one Senior Claim Analyst. A Supervisor and Senior Claims Analyst oversaw the work. Three additional staff worked on a part-time basis during the period of greatest volume.

13. Claims were sampled on a regular basis to ensure the quality of internal work product and the accuracy of claim determinations. Two staff were dedicated to quality review.

14. Verus had four Representatives available to provide support for claimants through the toll-free number and email during the Claim Submission Period. One Representative has been dedicated to outreach for claimants with deficient claims and will remain available to answer inquiries from filers through the disbursement period.

15. As of July 28th, 2021, Verus had received a total of 1,467 letters and email from potential Settlement Class Members inquiring about the claims submission process or submitting claims.

16. The Settlement Program's toll-free telephone line had an Interactive Voice Recognition menu with several options that provided recorded information about the settlement and claim filing, as well as an option to speak with a live

representative during business hours. Verus received 3,603 calls to live representatives as of July 28th, 2021.

17. As of July 28th, 2021, Verus has made 1,673 calls and sent 303 email messages, mainly to pro se Claimants, to offer assistance in addressing deficiencies in their claims.

18. The Settlement Trustee, Class Counsel, and Verus supervisory personnel had regular meetings and exchanges via telephone, videoconferencing, and email to discuss the claims processes, administration finances and logistical issues that arose that required attention, mainly attributable to the COVID-19 Pandemic, Verus regularly provided counsel to the parties with updates on claim processing and promptly responded to questions from both sides.

19. Since the commencement of claim filing, 12,150 claims for 11,904 distinct Injured Persons were received by the Settlement Administrator by mail or were initiated through the online claim filing portal. Duplicate claims are common in tort claims administrations of this type and Verus's claim review and adjudication processes are geared to identify and address them when they occur.

20. Of the claims received by mail or initiated through the online portal, 9,443 claims were sufficiently complete as of the Claims Submission period to be submitted for further review for compensation.

(a) Of those claims, unrepresented, pro se claimants submitted 459 claims.

- (b) Pro se claimants and law firms withdrew 79 claim submissions prior to the Claims Determination Deadline, yielding 9,364 claims for review and adjudication.
- (c) The Settlement Administrator has completed its review of the 9,364 claims to determine their eligibility for compensation under the POD.
- (d) Of the 9,364 claims that the Settlement Administrator has reviewed, 5,275, or 56.3%, were approved for compensation under Part A of the POD and qualified as Settlement Class Members.
- (e) The Settlement Administrator deemed 224 claims from unrepresented, pro se claimants as qualifying for compensation under Part A.
- (f) The 8,052 Settlement Class Members include 5,275 Primary Claimants and 2,777 Derivative Claimants, as those terms are defined in the POD.
- (g) Based on the Settlement Administrator's review and consideration of each claimant's claims submission and supporting documentation, as well as injury adjudication certifications from Qualified Asbestos Trusts, the Settlement Administrator found that 5,058 Settlement Class Members qualified for compensation under Part B. Table 1 below provides a breakdown of the number of claims approved for each of the disease levels established under the POD, with pro forma calculated gross awards each claimant would receive for each of the disease levels

(unadjusted for any reserves, the class representative award) and the total award of payments for each disease level. Actual payments will be subject to the completion of the audit and spillover allocations the Settlement Trustee determines in accordance with the POD. The removal of claims from the payable population based on unsatisfactory audit results may affect spillover payments.

Table 1: Determined Compensation Level of Part B Claims			
Disease Level	# of Claims Approved	\$ Per Claim	Total
Level 1 Claim (Non-malignant asbestos disease other than severe asbestosis)	4,468	\$3,075.93	\$13,743,255.24
Level 2 Claim (Malignant asbestos disease other than Mesothelioma or Level 3 Lung Cancer)	127	\$27,683.39	\$3,515,790.53
Level 3 Claim (Either: (a) primary lung cancer with evidence of underlying bilateral asbestos-related non-malignant disease; or (b) severe asbestosis)	394	\$61,518.66	\$24,238,352.04
Level 4 Claim (Mesothelioma)	69	\$264,530.24	\$18,252,586.56
Total	5,058		\$59,749,984.37

- (h) As the foregoing chart indicates, the Settlement Fund will, if approved, pay at least **\$59,749,984.37** to Settlement Class Members under Part B.
- (i) As of the creation of this *pro forma* analysis, there will be a \$2,224,000 spillover to the B Fund from the unused \$6,500,000 A Fund and a \$6,500,000 spillover to the B Fund from the unused EIF Fund.
- (j) 2,599 Settlement Class Members that qualify for payment under Part B were on the Presumed Class Member List.
- (k) No Settlement Class Members qualified under Part C for additional compensation under the Extraordinary Injury Fund.
- (l) The value given to individual Level 4 Mesothelioma claims lies within the historical liquidated value range that has been applied to the 524g trusts that Verus administers.

21. The Settlement Administrator determined that 4,822 claims were either partially qualified or non-qualified, and mailed those claimants or their registered law firms a notice, advising that the claimant or law firm may attempt to (a) cure any deficiencies identified or provide additional information, documentation or certifications to be reviewed by the Settlement Fund for reconsideration; or (b) inform the Settlement Fund that the Claimant is requesting review and determination of any contested issue(s) before the Settlement Trustee and submit a

Settlement Trustee Adjudication request specifying the reasons for the appeal or challenge.

- (a) 3,523 claimants or their Law Firms attempted to cure the deficiencies in their claim submissions. 680 of those claims were deemed Qualified or Partially Qualified after their re-review.
- (b) No claimants appealed the determination of the Settlement Administrator to the Settlement Trustee.

22. Following the Claim Determination Deadline, 359 approved claims were selected for audit, following the protocol in the Plan of Distribution. Four auditors were assigned to examine these claims.

- (a) The audit sample included 9 claims submitted by pro se claimants and 350 claims submitted by law firms.
- (b) The audit sample included 12 Part A Claims and 347 Part B Claims.
- (c) As of July 28th, 2021, the auditors had received 355 responses to their audit requests.
- (d) Final results of the audit are still pending as of the date of this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.



EXHIBIT A

Settlement Website

(a) "Home Page"

Williams Emtal Talc Settlement Fund

[Home](#)
 [Resources for Filing Claims](#)
 [Resources for Law Firms](#)
 [Settlement Documents](#)
 [FAQ](#)
 [Contact Us](#)
 [File a Claim](#)

Industrial Talc Asbestos Settlement

The deadline for filing claims was March 16, 2021. New claims can no longer be accepted.

The *Williams Emtal Talc Settlement Fund* ("Settlement Fund") was established in the *Williams Class Action* under a Settlement Agreement ("Settlement Agreement") preliminarily approved by the United States District Court, District of New Jersey, ECF No. 623 on September 3, 2020. If and when the Settlement Agreement is finally approved by the Court following a Fairness Hearing currently scheduled for September 23, 2021, the Settlement Fund will be used to pay compensation to eligible Settlement Class Members (Class Members) who timely submit Claim Submissions in accordance with a [Plan of Distribution](#) (POD) approved by the Court.

The Settlement Fund's proposed POD establishes the policies and procedures for submitting, receiving, reviewing and paying claims for asbestos personal injuries and other damages that were the subject of the claims asserted in the *Williams Class Action*. These procedures include the claim form and authorizations and the supporting documents that must be filed with the Settlement Fund as a Claim Submission.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
STAY IN THE SETTLEMENT CLASS AND SUBMIT A CLAIM	<p>The only way to get a payment.</p> <p>To receive monetary benefits, you will need to timely submit a claim. However, if the Court approves the Settlement you will be bound by the terms and release contained in the Settlement even if you do not submit a claim, unless you exclude yourself as described below.</p>
EXCLUDE YOURSELF	<p>Get no payment.</p> <p>This option allows you to pursue a lawsuit against defendant BASF, defendant Cahill Gordon & Reindel LLP and any of their co-defendants about the legal claims in this case. It also is the only option that allows you to ever be part of any other lawsuit against BASF or the other parties being released under the Settlement Agreement for any asbestos-related personal injury or wrongful death claim, whether the injury or claim is known or unknown, including any potential subsequent asbestos-related personal injury or wrongful death claim that may arise in the future.</p>

OBJECT	Write to the Court if you do not like the Settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.
DO NOTHING	<p>If you do nothing, you will remain in the Class Action as a Class Member and will not, in the future, be able to pursue any other lawsuit against BASF, Cahill or the other parties being released under the Settlement Agreement for any asbestos injury or wrongful death claim, known, unknown or potential, including any possible secondary disease or second asbestos injury claim that may arise in the future. If you do not timely file a complete Claim Submission with the Administrator, you will not receive compensation.</p> <p>The deadline to file a Claim Submission Form is January 15, 2020 and the deadline to submit all required supporting documents necessary to complete a claim (Document Submission Deadline) is February 19, 2021.</p>

Important Dates and Deadlines:	
Class Membership Exclusion (opt-out) Deadline	February 16, 2021
Claim Submission Deadline	March 16, 2021
Claim Document Submission Deadline	May 20, 2021
Objection and Intervention Submission Deadline	February 16, 2021
Fairness Hearing	September 23, 2021

(b) “Resources for Filing Claims”

Claim Submission Forms

CAP Regarding Unavailable Estates [Download File](#)

Standard Claim Form [Download File](#)

This Claim Form is for use for all Claim submissions submitted by the Injured Person or his/her Personal Representative. If the Injured Person is deceased and no estate is open, please use the Alternate Claim Form below.

Standard Claim Form Verification [Download File](#)

For Online Filers: All Claims submitted online require a signed verification. This form must be signed by hand and not electronically. Please use this Verification Form for all Standard Claim Form submissions. It will also be available in the Portal when completing your claim. If you are mailing in a paper Claim Form, your signature must be provided in Section 11 and this form is not necessary.

Alternate Claim Form [Download File](#)

If the Injured Person in an Underlying Lawsuit is deceased and no estate is open, this Claim Submission Form may be submitted by the spouse or child, acting with written unanimous consent of all other living children. Alternate Claims are only eligible for Part A compensation. If the Injured Person in an Underlying Lawsuit is deceased and no estate is open, this Claim Submission Form may be submitted by the spouse or child, acting with written unanimous consent of all other living children. Alternate Claims are only eligible for Part A compensation.

Alternate Claim Form Verification [Download File](#)

For Online Filers: All Claims submitted online require a signed verification. This form must be signed by hand and not electronically. Please use this Verification Form for all Alternate Claim Form submissions. It will also be available in the Portal when completing your claim. If you are mailing in a paper Claim Form, your signature must be provided in Section 9 and this form is not necessary.

Supporting Documentation Requirements [Download File](#)

The type of documentation needed to support your claim depends on the compensation type that has been selected (A, B, C) and whether the claimant is on the Presumed Class Member list. This document provides a summary of the documentation needed for all claims.

Ineligible Diagnostician List [Download File](#)

Medical records provided by these physicians will not be accepted to support medical criteria for Part B claims.

Extraordinary Injury Fund (EIF) Eligibility Waiver Form

[Download File](#)

If you are applying for Part C compensation and are unable to provide all of the required documentation, please use this form to request a waiver.

Settlement Trustee Adjudication Request

[Download File](#)

This form may be used to inform the Settlement Fund that the Claimant is requesting review and determination of any contested issue(s) before the Settlement Trustee and to specify the reasons for the appeal or challenge.

Lien Forms

Lien Questionnaire – Authorization to Disclose Health Information

[Download File](#)

This Lien Questionnaire must be completed for all claimants, but does not need to be included in the initial Claim submission.

Medicare Proof of Representation Form

[Download File](#)

This Form must be completed for all claimants, but does not need to be included in the initial Claim submission.

Lien Questionnaire Asbestos with Medicare Part C and D

[Download File](#)

This Lien Questionnaire must be completed for all claimants, but does not need to be included in the initial Claim submission.

Texas Medicaid Medical Authorization

[Download File](#)

This document is only needed for claimants who are Texas residents. If filing online, this form will also be available in the Williams Emtal Talc Lucid Portal.

Florida HIPAA Compliant Medical Release

[Download File](#)

This form is only needed for Florida residents. If filing online, this form will also be available in the Williams Emtal Talc Lucid Portal.

(c) “Resources for Law Firms”

How to Register Your Law Firm

Law firms seeking to file claims must first register with the Williams Emtal Asbestos Settlement Fund.

To register your firm, please send the completed documents below to Emtaltalc@verusllc.com.

- [Electronic Filer Agreement](#)
- [Registration Form](#)
- [W-9](#)

Please allow 2-3 business days for processing.

Once your firm has been registered, the individual whom you have designated as your **Law Firm Administrator** on the Registration Form will be given access to the [Williams Emtal Talc Lucid Portal](#). The **Law Firm Administrator** will be able to create user accounts for other staff at your firm once they have logged into the Portal.

Filing Methods

Online

Claims may be submitted individually or in batches through the [Williams Emtal Talc Lucid Portal](#).

[Instructions for uploading Claims in batches.](#)

By Mail

You can also send a completed [Claim Form](#) by mail to:

Emtal Talc Settlement c/o Verus LLC
3967 Princeton Pike
Princeton, NJ 08540

Law Firm Registration Documents

Law Firm Registration Form

Please complete this Form whether filing by mail or online. All law firms must register before submitting claims.

[Download File](#)

Electronic Filer Agreement

Executing this Form will allow you to gain access to the Williams Emtal Talc Lucid Portal to file claims electronically. Online filing is recommended for convenient and expeditious processing.

[Download File](#)

W-9

All registering law firms must submit a W9 for their firm.

[Download File](#)

(d) "Settlement Documents"

Settlement Documents

Settlement Documents	
Petition for Approval of Attorney Fees and supporting documents 10.20.2020.	Download File
Consent Order Amending Deadlines	Download File
Long Form Notice	Download File
Motion for Preliminary Approval	Download File
Preliminary Approval Order	Download File
Settlement Agreement	Download File
Plan of Distribution	Download File

(e) “Frequently Asked Questions”

Frequently Asked Questions

– I got a Notice about this settlement in the mail. Why did I get this?

You, someone in your family, or a deceased person for whom you were a personal representative may have been a party in an asbestos injury or wrongful death lawsuit filed between March 8, 1984 and March 29, 2011, that named Engelhard Corporation or BASF Catalysts, LLC or one of their subsidiary or affiliated companies as a defendant, which lawsuit was voluntarily or involuntarily dismissed. During this period of time, numerous lawsuits were filed against Engelhard/BASF alleging that asbestos injuries caused by exposure to Emtal Talc, the brand name of talc produced by Engelhard/BASF’s subsidiaries. After the lawsuits were dismissed or resolved, a dispute developed about whether information concerning the existence of asbestos in Emtal Talc was concealed or misrepresented by Engelhard/BASF and its national defense coordination law firm, Cahill, Gordon & Reindel, which may have led to the unfair dismissal of the asbestos lawsuits. The dismissals of these lawsuits as to Engelhard/BASF are presently the subject of a proposed class action lawsuit pending in the United States District Court for the District of New Jersey. The case is known as Williams, et al v BASF Catalysts, LLC, et. al, C.A. No. 2:11-cv-01754.

The Court sent you this Notice because you have a right to know about a proposed settlement of a class action lawsuit and about your options. If the Court approves the Settlement and after any objections and appeals are resolved, an Administrator appointed by the Court will make the payments that the Settlement allows. You may be eligible for payment.

+ What is this lawsuit?

+ What is “Emtal Talc”?

+ What is Engelhard?

+ What is a class action?

+ How many class members are there in this class action?

+ How do I know if I am a Class Member?

+ What if I am not sure whether I am a Class Member?

+ Do I need to hire a lawyer to represent me in the Settlement?

+ Who is “Class Counsel”?

+ What does the Settlement provide?

+ How much money will I receive in the Settlement if my claim qualifies?

+ What am I surrendering by staying in the Settlement Class?

+ What must be done to get a monetary payment from the Settlement Fund?

+ How can I submit a claim?

+ Is there a time limit to file claims?

+ When would I get paid if my claim qualifies?

+ Can I make a dispute if my claim isn't paid, or if I disagree with the amount?

+ How do I exclude myself (opt out of) the Settlement?

+ Can I opt out by email or over the phone?

+ What does it mean to Opt Out?

+ If I don't opt out, can I still sue BASF, Cahill and the other Released Parties for the same thing later?

+ What if I already have a pending asbestos lawsuit?

+ If I do opt out, can I still get paid?

+ What's the difference between objecting to the Settlement and excluding yourself from the Settlement?

+ How much time do I have to correct a Deficiency?

+ If the injured party is deceased, can I file a claim on his/her behalf?

+ What is the difference between the Standard Claim Form and the Alternate claim form? Which do I use?

+ What is the difference between Part A, Part B and Part C?

(f) “Contact Us”

Contact Us

For any questions about filing a claim, please contact the Claims Administrator.

Email: emtaltalc@verusllc.com

Phone: 1-888-401-1929

Mail: Emtal Talc Settlement, c/o Verus Claims Services, LLC
3967 Princeton Pike, Princeton, New Jersey 08540

(g) “File a Claim”

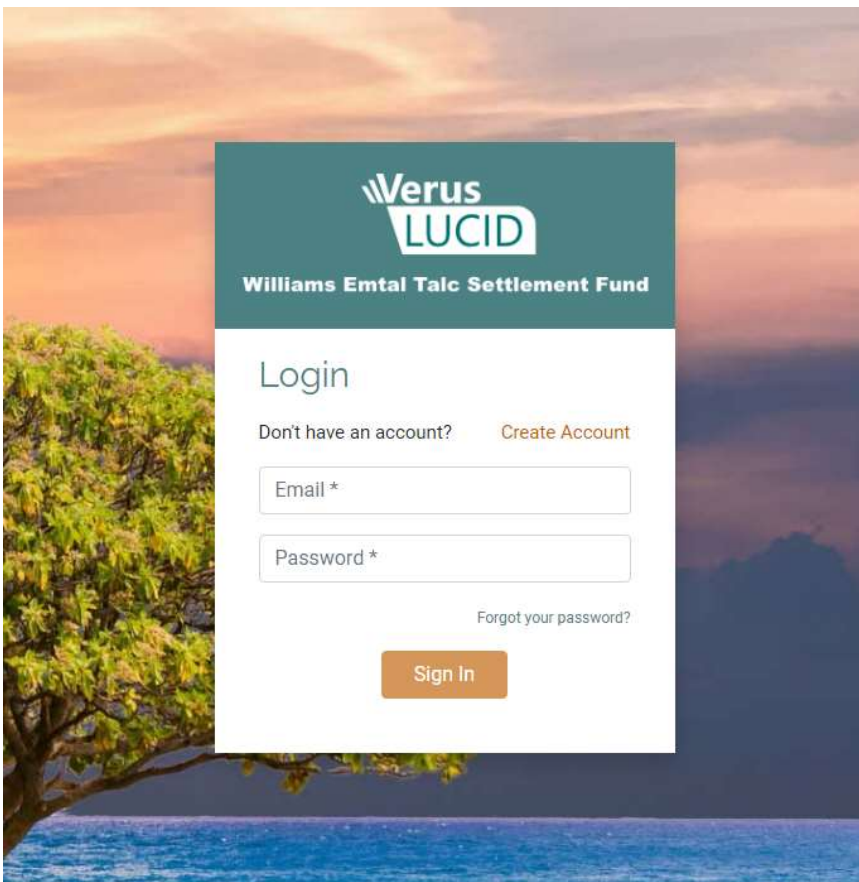


EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KIMBERLEE WILLIAMS, et al.

Plaintiffs,

vs.

BASF CATALYSTS LLC, et al.

Defendants.

No. 2:11-cv-01754 (BRM) (AME)

CIVIL ACTION

**DECLARATION OF ORRAN L. BROWN, SR.
IN SUPPORT OF FINAL APPROVAL OF SETTLEMENT**

I, ORRAN L. BROWN, SR., hereby declare and state as follows:

I. INTRODUCTION

1. ***Personal Information.*** My name is Orran L. Brown, Sr. I am the Chairman and a founding partner of BrownGreer PLC, located at 250 Rocketts Way, Richmond, Virginia 23231.

2. ***The Capacity and Basis of this Declaration.*** I am over the age of 21. Unless otherwise noted, the matters set forth in this Declaration are based upon my personal knowledge, information received from the parties in this proceeding (the “Parties”), and information provided by my colleagues at BrownGreer. Any data provided is based upon BrownGreer’s work performed in this Settlement Program to date.

II. BACKGROUND

3. ***Prior Declaration.*** Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement on July 23, 2020. (Doc. No. 621-1, the “Motion for Preliminary Approval.”) My Declaration in Support of Notice Plan (Doc. No. 621-16, the “Notice Declaration”) appeared as Exhibit M to the Motion for Preliminary Approval. In that Notice Declaration, I detailed my

and my firm's experience and described the notice plan proposed for this matter (the "Notice Plan").

4. ***BrownGreer's Appointment as Administrator.*** On September 3, 2020, the Court entered its order preliminarily approving the Notice Plan and the class action settlement proposed in this litigation (the "Preliminary Approval Order") and appointed BrownGreer as the Notice Agent. (Doc. No. 623, ¶ 9.)

5. ***The Role of the Notice Agent.*** The Notice Agent's primary duties in this Program are:

- (a) designing, implementing, and carrying out the Notice Plan;
- (b) establishing and maintaining a toll-free telephone number; and
- (c) serving notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

(Preliminary Approval Order ¶ 9.) In anticipation of the entry of the Preliminary Approval Order, BrownGreer began the notice planning phase, and we continued to carry out our role as Notice Agent following the entry of the Order.

6. ***The Purpose of this Declaration.*** Pursuant to Section 9.71 of the Settlement Agreement, I submit this Declaration to (1) show BrownGreer's execution of its role as Notice Agent, and (2) provide relevant notice data to the Court for final approval consideration.

III. ESTABLISHMENT AND OPERATION OF TOLL-FREE NUMBER

7. ***Call Center.*** We opened a dedicated toll-free telephone number, 1-888-401-1929, on July 23, 2020, to serve as an additional Class Member resource in this Program. From that day through September 16, 2020, callers would hear a recording letting them know that

Plaintiffs’ counsel filed a Motion for Preliminary Approval and should the Court grant preliminary approval, the toll-free line would become a live agent call center. On September 17, 2020, following the entry of the Preliminary Approval Order, callers began hearing a recording that provided options to learn more about topics related to the class notice, speak to a program specialist about the notice and/or notice program during live agent hours (9:00 am ET – 5:00 pm ET), leave a message outside the live agent hours, or be transferred to the Settlement Administrator for questions related to anything other than the class notice. As of August 17, 2021, we had received 7,166 total calls to the toll-free line and fielded 2,468 total calls with live agents.

IV. CAFA NOTICE

8. Background. CAFA requires that each defendant participating in a proposed settlement serve notice of the proposed settlement upon “the appropriate State official” and the “appropriate Federal official” within ten days of the filing of the motion proposing the settlement. 28 U.S.C. § 1715(b) (“CAFA Notice”). Section 9.6 of the Settlement Agreement noted this requirement, and the Defendants later assigned BrownGreer, as the Notice Agent, the responsibility of serving the CAFA Notice.

9. CAFA Notice. On August 3, 2020, pursuant to 28 U.S.C. § 1715(b), BrownGreer staff, acting under my direction and supervision, served a cover letter and an enclosed read-only compact disc upon the parties listed in Exhibit 1 to this declaration, *i.e.*, the U.S. Attorney General and the appropriate government officials for all fifty states, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. Specifically, the compact disc included: (1) the CAFA Notice Recipient List; (2) copies of the original and amended complaints; (3) a copy of the Plaintiffs’ Motion

for Preliminary Approval, which contained as exhibits a copy of the original Class Action Settlement Agreement between the Parties and copies of the proposed notices to potential class members; (4) copies of dismissal orders; and (5) the estimated potential distribution of Class Members and their corresponding potential shares of settlement funds (collectively, with the cover letter, the “CAFA Notice”). Exhibit 2 to this declaration shows a copy of the CAFA Notice that we mailed as described above, with exhibits omitted due to size.

10. *Proof of Delivery.* We sent the CAFA Notice by Certified Mail, and BrownGreer tracked the delivery of each CAFA notice packet. Exhibit 3 to this declaration shows delivery confirmation information for the CAFA Notice. We derived the delivery confirmation information from return receipt cards delivered to BrownGreer by the USPS and from the USPS online parcel tracking feature on www.USPS.com.

11. *Responses to the CAFA Notices.* We did not receive any questions or objections from recipients of the CAFA Notice.

V. THE SETTLEMENT CLASS

12. *The Proposed Settlement Class.* The Parties’ March 13, 2020 Settlement Agreement defines the proposed Settlement Class as the following:

[A]ll Persons within the United States and its territories who after March 7, 1984 and before March 30, 2011 filed and Served a lawsuit against Engelhard/BASF seeking asbestos-related bodily injury compensation or other relief arising from exposure to Emtal Talc products, and who before March 30, 2011 either: (A) had voluntarily dismissed or terminated the lawsuit as to Engelhard/BASF after the suit was filed, including any voluntary dismissal or release of claims due to settlement; or (B) had their lawsuit as to Engelhard/BASF involuntarily dismissed.

(Agreement § 1.2.1.) The “Persons” include two groups: (1) the Class Members with a right to claim damages related to their own Emtal Talc exposure (the “Injured Persons”); and (2) the Derivative Claimants with a right to damages based on an Injured Person’s injury or death,

including such groups as spouses, heirs, legatees, personal representatives, and wrongful death beneficiaries and assignees (the “Derivative Claimants”). (Agreement § 1.3.60.)

13. *The Class Data.* The Parties gave the Settlement Administrator in this matter, Verus LLC (“Verus”), access to a number of data sources, including databases and spreadsheets of plaintiff data from several plaintiff law firms, copies of complaints containing plaintiff names as well as addresses and/or Social Security Numbers (“SSNs”) for some of these plaintiffs, copies of pleadings, interrogatories, depositions and other documents from the underlying lawsuits, and other non-privileged material discovered in the *Williams v. BASF Catalysts, LLC*, No. 2:11-cv-01754, litigation (the *Williams* matter). Verus provided BrownGreer with an aggregated list of unique series of different Class Member lists extracted from the class data, and where such information was available, also provided details about whether the Class Members were deceased, relatives of those deceased Class Members, recent contact information for these relatives and Class Members who are presumed to be living, through TransUnion proprietary database searches, and the names and addresses of certain Class Members’ attorneys from the underlying lawsuits.

We consulted with Verus and the Parties to develop a final Class Member list and updated information for a number of Class Members in collaboration with LexisNexis, a global provider of information and analytics. We ran the names and additional data points available for the Class Members through LexisNexis’ proprietary database of over 83 billion public records to further identify deceased Class Members, their first-degree relatives, and a last known address for these relatives and the Class Members presumed to be living. After we incorporated the results from LexisNexis, we created two distinct lists: (1) the Class Member List containing 18,734 Class Members, 7,055 of whom LexisNexis and/or Verus’ data source(s) identified as

deceased (the “Deceased”) and 11,679 of whom are presumed to be living (the “Presumed Living”); and (2) the Relative List containing 30,269 known first-degree relatives¹, grandparents, and grandchildren of deceased Class Members (the “Relatives”). We further culled the Relative List to include only those 27,747 Relatives for whom there was no indication of being deceased, belonging to 5,520 of the Deceased Class Members, forming the “Presumed Living Relative List.”

Having identified the Class Members and the above identified cohorts of Deceased, Presumed Living, and Relatives, our next task was to compile addresses or other contact information to be able to provide direct notice to Class Members. Through the material provided regarding the underlying lawsuits, we were initially able to pinpoint addresses for all but 5,371 of the potential Class Members.

14. *Additional Efforts to Obtain Class Data from Asbestos Trusts.* We understood from discussions with Verus and the Parties that there is a high likelihood that the Class Members in this case had filed claims with one or more asbestos bankruptcy trusts established under 11 U.S.C. § 524(g) (the “Trusts”). After numerous discussions with the Parties on possible steps to find contact information for known Class Members, on February 14, 2020, BrownGreer emailed 10 Trust Counsel and Trustees who collectively represent and serve 38 of the largest Trusts, 20 of which are administered by Verus, and invited a phone conversation to discuss conceptually how the Trusts might be able to assist in effecting direct notice to potential class members who match to a name in their claimant databases.

Between February 17 and March 3, 2020, we had calls with the eight Trusts Counsel and Trustees, representing and serving 34 Trusts, who had responded to our initial email and agreed

¹ First-Degree Relatives includes spouses, siblings, children, and parents.

to speak with us over the phone. We explained on those calls that there were approximately 5,000 potential Class Members for whom we had no information from which we could ascertain a mailing address for the Class Member or contact information for a relative, and we were hopeful that the Trusts would be willing to help us and the Parties here by disclosing such data to us, or disseminating the class notice themselves to such persons.

The Trusts tended to take the same position in response to our entreaties, though the level of support they were willing to provide varied. No Trust was willing to disclose claimant data voluntarily, citing to Trust claimant rights of confidentiality. All Trust Counsel and Trustees with whom we spoke also indicated that the addresses they maintained were of claimants' counsel and not the Trust claimants. Many expressed concerns about the unreliability of matches based on only a full name. However, while several Trust Counsel and Trustees were less amenable to supporting the notice process in any way because of concerns with confidentiality, Trust resources, and false name matches, a number of them indicated an initial potential willingness to send the notice to matching claimants' attorneys on behalf of this settlement.

Between March 13, 2020 and March 31, 2020, we engaged the Trusts in several follow-up discussions over phone and email, during which we shared more information about the potential settlement, and in a few instances, a copy of the complaint and the draft class notice. Ultimately, Trust Counsel and Trustees with whom we spoke declined to assist in the notice process. It was around this time that we learned that Class Counsel and Verus had discovered an alternative approach to identifying Class Member contact information and reaching those potential Class Members. Accordingly, we terminated our pursuit of potential Class Member data from the Trust databases or any additional support in providing notice to these 5,371 persons for whom we had no address and instead relied on the class data provided by the Parties

and Verus and the efforts they undertook to supplement the Class Data to develop the Notice Plan.

15. ***Additional Efforts to Obtain Class Data from Discovery Documents.*** While communication with the Trusts was on-going, Class Counsel's data management vendor forwarded to Verus the document images produced by defendants in the *Williams* matter and third parties in response to subpoenas relating to the underlying cases in anticipation of preparing them for use as outlined in the Plan of Distribution. Verus and Class Counsel reviewed these documents using data science name matching techniques and other technology assisted document search and review techniques to further identify class members identities and location information, and by doing so, identified mailing addresses for 2,871 of the 5,371 persons for whom we previously had no address. Because these documents also revealed that 241 persons on the original Class List were lay or expert witnesses, we removed them from the Class List. As a result, we narrowed it down to 2,500 Class Members whom we were unable to attempt to notice directly or through a relative because of a lack of address or other identifying information.

VI. THE NOTICE PLAN

16. ***Direct Notice.*** The first goal of this Notice Plan was to provide direct notice to all Settlement Class Members who could be identified through reasonable effort. Indeed, the Parties, Verus, and BrownGreer undertook considerable effort to identify as many known Settlement Class Members as reasonably possible. We mailed the long-form Notice appearing as Exhibit 4 to this declaration in the following manner:

- (a) ***Presumed Living Class Members.*** On September 17, 2020, we mailed the long-form Notice to all 9,370 Presumed Living Class Member for whom we had a name and address. We attempted to verify and update all addresses against the United States

Postal Service's ("USPS") National Change of Address ("NCOA")² database prior to mailing. When a Notice was returned by the USPS as undeliverable but with a forwarding address, we re-mailed the Notice to the updated address provided by the USPS. When the returned Notice did not identify any updated address from the USPS, we submitted the Class Member's mailing information to the LexisNexis compendium of domestic addresses for updated address information, if available. In addition, we updated addresses based on requests received from Class Members. We were able to reach 8,393 (71.9%) of all Presumed Living Class Members directly (89.6% considering only those for whom we had an address), representing 44.8% of the total Settlement Class.

- (b) *Presumed Living Relatives of Deceased Class Members.*** We had names and addresses for 27,747 Relatives in the Presumed Living Relative List associated with 5,520 distinct Deceased Class Members. The Settlement Agreement permits a personal representative to submit a claim on behalf of a deceased Class Member and such personal representatives release their claims against the defendants regardless of whether they file a claim. (Agreement § 1.3.63, § 1.3.70). We mailed notice to these known Presumed Living Relatives who may be or may know deceased Class Members' personal representatives. We were able to reach 25,683 Presumed Living Relatives belonging to 5,307 (75.2% of) total deceased Class Members, or 28.3% of the total Settlement Class.
- (c) *Deceased Class Members.*** Of the 7,055 Class Members who are deceased, we had a name and mailing address for 6,826 (96.8%). While notices mailed to these persons' last known addresses, of course, did not reach the actual Class Members, they may have, at minimal cost, reached family members or other persons who are or may know personal representatives of the Deceased.
- (d) *Attorneys and Law Firms in Underlying Lawsuits.*** As described above, Verus provided to us the names and mailing addresses of 50 attorneys and law firms who collectively represented 4,929 Class Members in their underlying lawsuits, 2,212 for whom search efforts did not yield direct contact or other identifying information. We understood from Verus and the Parties that the majority of these attorneys or their successors are still active and, we believed it was reasonable to conclude that many were in active communication with the living Class Members who they represented during the class period or may have been a reliable source from whom we could update contact information for these clients. Therefore, we mailed or emailed a long-form Notice to every attorney and law firm for whom we had an address in the same manner described above for Presumed Living Class Members and Relatives. We provided the lawyers with a list of potential Class Members for whom our research suggests they filed underlying lawsuits, and enclosed a letter prepared by Class Counsel appearing as Exhibit 5 to this declaration that provided background about the matter, requested that the recipient mail the Notice to his or her clients who were

² The NCOA database contains records of all permanent change of address submissions received by the USPS from individuals and businesses. The Settlement Potential Claimant list is submitted against the database, and a Potential Claimant's address is automatically updated with the new address from USPS data based on a comparison with the Potential Claimant's name and last known address.

plaintiffs in the underlying lawsuits, and asked the attorneys to respond to BrownGreer with confirmation that they mailed the Notice to their clients. Aside from requests from a few attorneys to email them the letter with the accompanying client list, we did not receive any other responses from these lawyers.

17. *Estimated Direct Notice Reach.* We mailed notice to over 86% of the Settlement Class either directly or through at least one relative of the Deceased, and just over 98% after including notice through plaintiffs' firms. After accounting for the undeliverable notices and Class Members to whom we could not send notice because of a lack of mailing address, we reached over 84% of Class Members and their Relatives directly. We understood from defense and plaintiffs' counsel that the attorneys for whom we had information in this case from depositions and other discovery documents were highly engaged with their clients, and therefore, the attorneys likely disseminated the message to their former and current clients. Additionally, it is likely that at least some portion of the notices we mailed to the Deceased did make it to a relative who could file on the decedent's behalf. Accordingly, we believe the 84% estimated reach percentage may be conservative. Under the circumstances, and thanks to the considerable data culling, cleansing, and enhancing efforts undertaken, we achieved a meaningful and important reach percentage that rises well above the 70% reach target suggested by the Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010) (the "FJC Checklist").

18. *Need for Publication Notice.* Generally, despite the strength of the data used to provide direct notice, there are a few unpredictable factors that could reduce the actual reach to Class Members, such as the fact that the Relatives to whom we sent Notice may not be or may not have notified the authorized personal representatives of the Deceased, if none of those Relatives were serving as the executor or other representative of the Deceased's estate. Accordingly, we supplemented the direct notice efforts with a carefully planned public notice

campaign to target those Class Members, Relatives, and other potential personal representatives we could not reach by mail because their identities were unknown, mailing addresses of those persons were unavailable, or mailed notices were returned to us by USPS as undeliverable. This public notice also reached Presumed Living Class Members and Relatives already notified by direct mail. By contacting such persons again, the public notice served the additional goals of strengthening Class Member and Relative awareness of the settlement and engaging those persons to become more likely to participate in the settlement program.

19. *Developing a Publication Notice Plan.* Notice by publication in the class settlement context refers to the practice of exposing potential members of a Settlement Class whom you cannot contact directly to a class settlement notice by strategically placing the notice in places where the Settlement Class Members will have the opportunity to see, read and react to the notice. A publication notice campaign is effectively an advertising campaign for the proposed class settlement. A publication notice strategy, therefore, must consider characteristics of the audience and how those audience members are most likely to see and respond to the notice. The publication notice strategy in the Notice Plan proposed for this case obviously targeted the Settlement Class. We also aimed to reach Relatives of the Deceased for the reasons described in Paragraph 16(b) of this declaration. Based on our analysis of the available last known addresses for Class Members and known Presumed Living Relatives, we estimated that nearly 82% of the Presumed Living Class Members and 72.5% of the Presumed Living Relatives reside in Ohio, Mississippi, Georgia, and Alabama. An analysis of available dates of birth for the Presumed Living Relatives revealed that more than 50% are ages 45-70. While there is limited date of birth information available for the Presumed Living Class Members, we know from the high percentage of deceased Class Members and representations of

the Parties nearly all Presumed Living Class Members are over 55. Therefore, the publication notice strategy used geographic, age, and other industry standard targeting techniques to try to reach potential Settlement Class Members.

(a) **Print Publication.** We adapted the long-form Notice into a summary notice format that could be placed as ads in various print publications. A sample of those print publication notices are found in Exhibit 6 to this declaration. From November 2 through November 30, 2020, we implemented a regional print publication campaign focused on the four states where the vast majority of Presumed Living Class Members and Presumed Living Relatives reside. We supplemented that campaign with three carefully selected national print ads chosen to reach Class Members and Relatives outside these four states. The table below shows the print publications where we placed summary versions of the long-form Notice.

Print Publications			
National			
	Publication	Description	Circulation
1.	<i>AARP Bulletin</i>	Provides timely insights and in-depth analysis important to Americans 50-plus on topics including health, Medicare, Social Security, finances, and consumer protection.	23,109,129
2.	<i>Conquer</i>	Magazine that is the forum for patients with cancer initiated by the Academy of Oncology Nurse & Patient Navigators. It features articles written by and for patients with cancer, survivors, nurse navigators, and other oncology team members. The magazine addresses the issues that patients, their family members, and caregivers face every day in an easy-to-read format. Issues include interviews with patients with cancer, information on access to care, and articles on lifestyle topics such as nutrition, stress management, personal finance, and legal and employer issues.	90,000
3.	<i>Coping with Cancer</i>	Magazine is edited for people whose lives have been touched by cancer. It provides the knowledge patients, survivors or professionals need to cope with the many issues confronting their daily lives, including assuming greater responsibility for, and participation in, the many facets of the disease. It includes information on research, treatment, survivor profiles, and latest news.	285,000
Regional			
	Publication	Location	Circulation
1.	<i>Akron Beacon Journal</i>	Akron, OH	56,951
2.	<i>Albany Herald</i>	Albany, GA	14,526
3.	<i>Columbus Ledger-Enquirer</i>	Columbus, GA	12,359
4.	<i>Delta Democrat Times</i>	Greenville, MS	9,722
5.	<i>East Liverpool Review</i>	East Liverpool, OH	3,514
6.	<i>Montgomery Advertiser</i>	Montgomery, AL	12,013

Regional			
	Publication	Location	Circulation
7.	<i>Northeast Mississippi Daily Journal</i>	Tulepo, MS	18,348
8.	<i>Portsmouth Daily Times</i>	Portsmouth, OH	8,574
9.	<i>Savannah Morning News</i>	Savannah, GA	16,799
10.	<i>Sun Herald</i>	Gulfport, MS	12,655
11.	<i>The Anniston Star</i>	Anniston, AL	8,985
12.	<i>The Atlanta Journal-Constitution</i>	Atlanta, GA	238,343
13.	<i>The Augusta Chronicle</i>	Augusta, GA	16,418
14.	<i>The Cincinnati Enquirer</i>	Cincinnati, OH	79,440
15.	<i>The Clarion-Ledger & Hattiesburg American</i>	Jackson, MS/Hattiesburg, MS	106,422
16.	<i>The Commercial Dispatch</i>	Columbus, MS	13,500
17.	<i>The Decatur Daily</i>	Decatur, AL	10,980
18.	<i>The Dothan Eagle</i>	Dothan, AL	12,357
19.	<i>The Greenwood Commonwealth</i>	Greenwood, MS	3,005
20.	<i>The Marietta Times</i>	Marietta, OH	5,730
21.	<i>The Meridian Star</i>	Meridian, MS	7,691
22.	<i>The Plain Dealer</i>	Cleveland, OH	138,938
23.	<i>The Selma Times-Journal</i>	Selma, AL	10,043
24.	<i>The Telegraph</i>	Macon, GA	16,759
25.	<i>The Tuscaloosa News</i>	Tuscaloosa, AL	12,169
26.	<i>Times Daily</i>	Florence, AL	12,271
27.	<i>Delta Democrat Times</i>	Greenville, MS	9,722
28.	<i>East Liverpool Review</i>	East Liverpool, OH	3,514
29.	<i>Montgomery Advertiser</i>	Montgomery, AL	12,013
30.	<i>Northeast Mississippi Daily Journal</i>	Tulepo, MS	18,348
31.	<i>Portsmouth Daily Times</i>	Portsmouth, OH	8,574
32.	<i>Savannah Morning News</i>	Savannah, GA	16,799
33.	<i>Sun Herald</i>	Gulfport, MS	12,655
34.	<i>The Anniston Star</i>	Anniston, AL	8,985
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39.	<i>The Commercial Dispatch</i>	Columbus, MS	13,500
40.	<i>The Decatur Daily</i>	Decatur, AL	10,980

Regional			
	Publication	Location	Circulation
41.	<i>The Dothan Eagle</i>	Dothan, AL	12,357

(b) **Digital Advertising.** In addition to the print media publications listed above, we incorporated a digital notice component into the Notice Plan.

(1) **Banner Advertisements.** In fashioning the components of the public notice program, we took into account the changes in media consumption as a result of the COVID-19 pandemic, during which far fewer people were traveling, staying in hotels, and visiting physician and other offices where magazines are often read, as well as the reality that many such locations, even though partially re-opened, have removed high-touch items like newspapers and magazines from their lounge and waiting areas. To accommodate such changes, we adapted the long-form Notice into banner ads, appearing as Exhibit 7, that could be placed on the online version of *People* magazine. The banner ad campaign ran from October 1 through October 31, 2020 and exposed the notice 3,125,461 times to approximately 1,953,419 potential Class Members, and importantly some of the younger Relatives, who may prefer to consume media electronically or have less opportunity now to consume print media. Viewers of the ad clicked on the ad 2,294 times and were routed directly to the Settlement Website, where they were able to download a copy of the long-form Notice.

(2) **Paid Internet Search Terms.** The paid search component of the Notice campaign involved the use of targeted keywords on top Internet search engines, such as Google. We purchased a list of terms, appearing in Exhibit __ to this declaration, that were narrowly related to the subject matter and Parties to this settlement for thirty days following commencement of the notice campaign. A link to the Settlement Website appeared when there was high relevance between the search and our selected keywords and was then ranked by a computed value based on the dollar amount of the bid. When Internet visitors searched for these keywords or keyword combinations, the Settlement Website was displayed at the top of the list of results for the search query. A sample of those ads can also be found in Exhibit 8. We ran the internet search terms aspect of the Notice Plan from September 17 through October 18, 2020, which resulted in 75,721 impressions and 517 click-throughs to the Settlement Website. This indicates there were at least 517 persons who searched for one or more of the selected terms and determined that the settlement may have some relevance to them such that they wanted to learn more. It is also possible that there were other persons who searched for one of the targeted keywords and clicked on a non-sponsored link that led them to the Settlement Website or typed the Settlement Website URL directly into their browser, though there is no measurable way of attributing that type of activity to the paid search term campaign.

(c) **Press Release.** On September 17, 2020, we issued a joint press release appearing as Exhibit 9 through Cision/PR Newswire, a leading provider of multimedia platforms and distribution. The press release explained the core aspects of the proposed

settlement and provide the address for the Settlement Website, as well as the toll-free number. The full press release was picked up by 93 news media outlets like yahoo! Finance, MarketWatch, and AP News with a combined audience of 119 million people.

20. *Other Notice Administration Efforts.* In addition to providing direct notice to the class and implementing a public notice campaign to satisfy due process and Rule 23's requirement of best notice practicable under the circumstances, we executed two postcard notice mailings at the request of counsel to encourage claim filing and notify Class Members about extensions to certain deadlines.

- (a) ***Reminder Postcard Notice.*** On December 29, 2020, we sent a postcard notice appearing as Exhibit 10 to this declaration to 12,584 Class Members and 24,639 Relatives of deceased Class Members whose original Notice did not return to us as undeliverable. The postcard reminded Class Members and Relatives about the original January 15, 2021 Claims Filing Deadline and provided information about how to submit a claim or check on the status of an existing claim.
- (b) ***Deadline Extension Postcard Notice.*** On January 11, 2021, the Court overseeing this case issued an order extending certain settlement deadlines, including but not limited to the Claims Filing Deadline, Opt-Out Deadline, and Objection Submission Deadline. On January 21, 2021, after consulting with the Parties, we sent a second postcard notice appearing as Exhibit 11 to this declaration to 13,286 Class Members and 25,672 Relatives of the Deceased whose original long-form Notice did not return as undeliverable or whose Notice did return but for whom we could identify an alternative address. The postcard informed recipients about the changed deadlines and reminded them how to proceed with submitting a claim, opting out of the settlement, or objecting to the settlement.

VII. CONCLUSION

21. *The Notice Plan is the Best Notice Practicable Under the Circumstances.*

The Notice Plan provided direct, individual notice by mail to potential Class Members and their known Relatives to the extent reasonably possible. The Notice Plan satisfied due process and Rule 23's requirement of the best notice practicable under the circumstances, including giving individual notice to all Class Members who could be identified with reasonable effort and supplementing those efforts with notice to persons associated with the

Class Members and paid media elements. With direct notice having reached in excess of 84% of Presumed Living Class Members or their attorneys of underlying lawsuits and at least one Relative of deceased Class Members, a regional public notice campaign that targeted Presumed Living Class Members and Presumed Living Relatives, national print publication ads that exposed Presumed Living Class Members and Relatives outside of the four primary states of residence to the notice, and a digital media component that targeted those Class Members and their Relatives who consume media electronically and actively search for information relevant to this matter, the Notice Plan provided the same or better reach than courts have approved in other similar class matters. The Notice Plan was also generally consistent with the aims of the FJC Checklist, including the content, design, format, methods of delivery, and reach of the class notice, all explained in Exhibit 12 to this declaration.

I, Orran L. Brown, Sr., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge. Executed on this 18th day of August, 2021.

A handwritten signature in blue ink, appearing to read "Orran L. Brown, Sr.", is written above a horizontal line.

Orran L. Brown, Sr.

Exhibit 1

CAFA Service List

CAFA Notice Service List - CAFA Notice: *Williams v. BASF Catalysts LLC, et al*, C.A. No. 2:11-cv-01754 (D.N.J)

Last Name	First Name	Office	Address 1	Address 2	Address 3	City	State	Zip Code
Barr	William	United States Office of the Attorney General	U. S. Department of Justice	950 Pennsylvania Ave NW		Washington	DC	20530-0001
Clarkson	Kevin	Office of the Attorney General	1031 W. 4th Avenue	Suite 200		Anchorage	AK	99501-1994
Marshall	Steve	Office of the Attorney General	501 Washington Avenue	P. O. Box 300152		Montgomery	AL	36130-0152
Rutledge	Leslie	Office of the Attorney General	323 Center Street	Suite 200		Little Rock	AR	72201-2610
Ale	Talauaga	Department of Legal Affairs	Executive Office Building	3rd Floor		Pago Pago	AS	96799
Brnovich	Mark	Office of the Attorney General	2005 N. Central Ave			Phoenix	AZ	85004-2926
Becerra	Xavier	Office of the Attorney General	Consumer Law Section	455 Golden Gate Avenue	Suite 11000	San Francisco	CA	94102
Weiser	Phil	Office of the Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway	10th Floor	Denver	CO	80203
Tong	William	Office of the Attorney General	165 Capitol Avenue			Hartford	CT	06106
Racine	Karl	Office of the Attorney General	441 4th Street NW	Suite 1100S		Washington	DC	20001
District of Columbia Bar		Office of Disciplinary Counsel	515 Fifth Street NW	Building A	Suite 117	Washington	DC	20001
Jennings	Kathy	Office of the Attorney General	Carvel State Office Building	820 North French Street		Wilmington	DE	19801
Moody	Ashley	Office of the Attorney General	The Capitol	PL-01		Tallahassee	FL	32399-1050
Carr	Chris	Office of the Attorney General	40 Capitol Square SW			Atlanta	GA	30334-3300
Camacho	Leevin	Office of the Attorney General	287 W O'Brien Dr			Hagatna	GU	96910
Connors	Clare	Department of the Attorney General	425 Queen Street			Honolulu	HI	96813
Miller	Tom	Office of the Attorney General	Hoover Building	1305 East Walnut Street		Des Moines	IA	50319
Wasden	Lawrence	Office of the Attorney General	700 W. Jefferson Street	Suite 210	PO Box 83720	Boise	ID	83720-0010
Raoul	Kwame	Office of the Attorney General	100 West Randolph Street			Chicago	IL	60601
Hill, Jr.	Curtis	Office of the Attorney General	Indiana Government Center South	302 West Washington Street	5th Floor	Indianapolis	IN	46204
Schmidt	Derek	Office of the Attorney General	120 SW 10th Ave	2nd Floor		Topeka	KS	66612
Cameron	Daniel	Office of the Attorney General	700 Capitol Avenue	Capitol Building, Suite 118		Frankfort	KY	40601
Landry	Jeff	Office of the Attorney General	1885 North Third Street			Baton Rouge	LA	70802
Healey	Maura	Office of the Massachusetts Attorney General	ATTN: CAFA Coordinator/General Counsel's Office	One Ashburton Place		Boston	MA	02108
Frosh	Brian	Office of the Attorney General	200 St. Paul Place			Baltimore	MD	21202-2202
Frey	Aaron	Office of the Attorney General	6 State House Station			Augusta	ME	04333
Nessel	Dana	Office of the Attorney General	G. Mennen Williams Building	525 W. Ottawa Street	P.O. Box 30212	Lansing	MI	48909-0212
Ellison	Keith	Office of the Attorney General	445 Minnesota Street	Suite 1400		St. Paul	MN	55101
Schmitt	Eric	Office of the Attorney General	Supreme Court Building	207 W. High Street	P.O. Box 899	Jefferson City	MO	65102
Manibusan	Edward	Office of the Attorney General	Pagan Loop	Capitol Hill		Saipan	MP	96950
Fitch	Lynn	Office of the Attorney General	Walter Sillers Building	550 High Street	Suite 1200	Jackson	MS	39201
Fox	Tim	Office of the Attorney General	Justice Building, Third Floor	215 North Sanders	PO Box 201401	Helena	MT	59620-1401
Stein	Josh	Office of the Attorney General	9001 Mail Service Center			Raleigh	NC	27699-6400
Stenhjem	Wayne	Office of the Attorney General	State Capitol	600 East Boulevard Avenue	Dept. 125	Bismarck	ND	58505
Peterson	Doug	Office of the Attorney General	2115 State Capitol	P.O. Box 98920		Lincoln	NE	68509
MacDonald	Gorden	Office of the Attorney General	33 Capitol St			Concord	NH	03301
Grewal	Gurbir S.	Office of the Attorney General	RJ Hughes Justice Complex	25 Market Street	Box 080	Trenton	NJ	08625-0080
Balderas	Hector	Office of the Attorney General	Villagra Building	408 Galisteo Street		Santa Fe	NM	87501
Ford	Aaron	Office of the Attorney General	Old Supreme Court Building	100 North Carson Street		Carson City	NV	89701
James	Letitia	Office of the Attorney General	Office of the Attorney General	The Capital	2nd Floor	Albany	NY	12224
Grievance Committee for the Ninth Judicial District			399 Knollwood Road	Suite 200		White Plains	NY	10603
New York Bar	Departmental Disciplinary Committee	Supreme Court Appellate Division	First Judicial Department	180 Maiden Lane	17th Floor	New York	NY	10038
Yost	Dave	Office of the Attorney General	State Office Tower	30 E. Broad Street	14th Floor	Columbus	OH	43266-0410
Hunter	Mike	Office of the Attorney General	313 NE 21st Street			Oklahoma City	OK	73105
Rosenblum	Ellen F.	Office of the Attorney General	Oregon Department of Justice	1162 Court Street NE		Salem	OR	97301
Shapiro	Josh	Office of the Attorney General	16th Floor, Strawberry Square			Harrisburg	PA	17120
Martinez	Ines	Office of the Attorney General	P.O. Box 9020192			San Juan	PR	00902-0192
Neronha	Peter	Office of the Attorney General	150 South Main Street			Providence	RI	02903
Wilson	Alan	Office of the Attorney General	P. O. Box 11549			Columbia	SC	29211-1549
Ravnsborg	Jason	Office of the Attorney General	1302 E. Highway 14	Suite 1		Pierre	SD	57501-8501
Slatery III	Herbert	Office of the Attorney General and Reporter	P.O. Box 20207			Nashville	TN	37202

CAFA Notice Service List - CAFA Notice: *Williams v. BASF Catalysts LLC, et al*, C.A. No. 2:11-cv-01754 (D.N.J)

Last Name	First Name	Office	Address 1	Address 2	Address 3	City	State	Zip Code
Paxton	Ken	Office of the Attorney General	Capitol Station	P. O. Box 12548		Austin	TX	78711-2548
Reyes	Sean	Office of the Attorney General	State Capitol	350 North State Street	Suite 230	Salt Lake City	UT	84114-2320
Herring	Mark	Office of the Attorney General	202 North Ninth Street			Richmond	VA	23219
George	Denise	Office of the Attorney General	34-38 Kronprindsens Gade	GERS Building	2nd Floor	St. Thomas	VI	00802
Donovan	TJ	Office of the Attorney General	109 State Street			Montpelier	VT	05609
Ferguson	Bob	Office of the Attorney General	1125 Washington Street SE	P.O. Box 40100		Olympia	WA	98504-0100
Kaul	Josh	Office of the Attorney General	Wisconsin Department of Justice		P.O. Box 7857	Madison	WI	53707-7857
Morrissey	Patrick	Office of the Attorney General	State Capitol	Building 1	Room E-26	Charleston	WV	25305
Hill	Bridget	Office of the Attorney General	State Capital Building	2320 Capital Avenue		Cheyenne	WY	82002

Exhibit 2

CAFA Notice



DIRECT DIAL: (804) 237-6245
OFFICE: (804) 521-7200
FACSIMILE: (804) 521-7299
CKTITMUS@BROWNGREER.COM

August 3, 2020

By Certified Mail

Federal and State Officials
Identified in Exhibit A in the Enclosed Disc

**Re: NOTICE UNDER THE CLASS ACTION FAIRNESS ACT OF 2005,
28 U.S.C. § 1711 *et seq.***

Williams v. BASF Catalysts LLC, et al, C.A. No. 2:11-cv-01754 (D.N.J)

Dear Sir or Madam:

I send this letter and the enclosed disc to you on behalf of BASF Catalysts, LLC (“BASF”), Cahill Gordon & Reindel LLP (“Cahill”), Howard G. Sloane, Ira Dembrow, Thomas Halket, and Arthur Dornbusch II, the defendants in the action referenced above, regarding a class settlement proposed for preliminary approval on July 23, 2020. The defendants are referred to collectively as the “Williams Defendants.” This communication constitutes the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1711 *et seq.* (“CAFA”).

The proposed settlement resolves the class action lawsuit brought against the Williams Defendants by a group of people (“Plaintiffs”) regarding (a) claimed exposure to Emtal Talc (a brand of industrial talc) that allegedly caused asbestos bodily injury and (b) the related lawsuits that were filed (the “Underlying Lawsuits”) against Engelhard Corporation, BASF Catalysts, LLC, and certain of their subsidiaries (such as Eastern Magnesia Talc Company) (collectively, the “Underlying Defendants”) and eventually dismissed. Cahill represented the Underlying Defendants in the Underlying Lawsuits. The Plaintiffs allege that the Williams Defendants¹ made misstatements or concealed evidence about the existence of alleged asbestos in Emtal Talc and failed to disclose related information before the dismissal of the Underlying Lawsuits. The Williams Defendants deny these allegations.

As CAFA Section 1715(b) requires, the enclosed disc includes:

1. Complaints.

¹ BASF acquired Engelhard Corporation in June 2006 through a merger transaction. Accordingly, Engelhard Corporation is not listed as a defendant in *Williams v. BASF Catalysts, LLC et al.*

- (a) A copy of the Class Action Complaint, including its exhibits 1-44, filed on March 28, 2011 (Exhibit B on the enclosed disc);
- (b) A copy of the Amended Class Action Complaint, including its exhibits 1-43, filed on August 4, 2011 (Exhibit C on the enclosed disc); and
- (c) A copy of the Second Amended Class Action Complaint, including its exhibits 1-43, filed on July 16, 2016 (Exhibit D on the enclosed disc);

2. **Motion for Preliminary Approval.** A copy of the Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement and Memorandum in Support, including all related documents, filed on July 23, 2020 (Exhibit E on the enclosed disc). Among these filings is the Declaration of Christopher M. Placitella, Esq. in Support of Plaintiffs' Motion for Class Certification ("CMP's Declaration") and all related exhibits. Exhibits to CMP's Declaration include:

- (a) A copy of the Class Action Settlement Agreement (Exhibit A to CMP's Declaration);
- (b) Copies of the proposed notices to potential class members (Exhibits K and L to CMP's Declaration);
- (c) A copy of the agreement to release and dismiss Defendant Arthur A. Dornbusch II, Esq. (Exhibit CC to CMP's Declaration);
- (d) A copy of the agreement to release and dismiss Defendant Howard G. Sloane (Exhibit S to CMP's Declaration);
- (e) A copy of the agreement to release and dismiss Defendant Thomas D. Halket (Exhibit T to CMP's Declaration); and
- (f) A copy of the agreement to release and dismiss Defendant Ira Dembrow (Exhibit U to CMP's Declaration);

3. **Dismissal Orders.**

- (a) A copy of the Dismissal Order for Defendant Scott A. Martin, filed on August 31, 2015 (Exhibit F on the enclosed disc); and
- (b) A copy of the Dismissal Order for Defendant Glenn A. Hemstock filed on April 18, 2016 (Exhibit G on the enclosed disc).

Proposed Class Counsel and Counsel for the Williams Defendants also executed a separate, confidential supplemental agreement that defines the parties' termination rights under

the Settlement Agreement. The operation of this confidential supplemental agreement is described in Section 11.1.1 of the Settlement Agreement

The proposed settlement class includes all persons who are within the United States or its territories and, between March 8, 1984, and March 29, 2011, filed and served an Underlying Lawsuit against one or more of the Underlying Defendants, seeking asbestos bodily injury compensation or other relief arising from exposure to Emtal Talc or a right to damages based on an asbestos injured person's injury or death, and before March 30, 2011, either (a) voluntarily dismissed or terminated the Underlying Lawsuit after the suit was filed; or (b) had their Underlying Lawsuit involuntarily dismissed by the presiding Court. Pursuant to CAFA § 1715(b)(7)(A), the table shown in Exhibit H (included in the enclosed disc) provides a list of the names of known, potential class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement, as determined by the class data available and related representations of counsel.

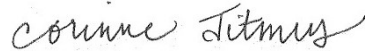
The proposed Settlement, if approved, would provide \$72.5 million to pay Class Members as follows: (a) \$6.25 million to those who prove they are Class Members; (b) \$59.75 million to those who sustained an asbestos-related injury; and (c) \$6.5 million to those who experienced an extraordinary physical injury and/or economic loss allegedly as a result of exposure to Emtal Talc, as well as an incentive award to certain plaintiffs who helped bring the case. The Williams Defendants have also agreed to pay court-approved attorneys' fees up to \$22.5 million, court-approved attorneys' expenses up to \$1.2 million, and up to \$3.5 million in notice and settlement administration costs.

The Plan of Distribution, found as Exhibit C to CMP's Declaration, establishes three compensation programs (Part A, Part B, and Part C) in which eligible Class Members can be paid. Part A payments are a fixed amount that may be reduced on a pro rata basis if a certain number of eligible Class Members make a claim. Part B payments are based on the Class Members' level of Qualifying Asbestos Disease and the number of claimants who qualify for each Part B claim level. Finally, the Part C compensation program provides additional payment for claimants with extraordinary and exceptional circumstances. While Class Member payments will be determined on an individual claim basis, because we do not yet know which or how many Class Members will file a claim; what Part B claim level they will prove, if any; and which Class Members will qualify for a Part C claim, we are unable to estimate individual awards and shares. Therefore, the estimated potential distribution of class members set out in Exhibit H, which assumes every Class Member will submit a claim and receive an equal share of available funds, is the most reasonable estimate available of potential shares of the entire settlement.

There is no final judgment or other notices of dismissal, and as of today, the Court has not scheduled any hearings related to this case.

Please contact me if you would like any further information.

Sincerely,



Corinne K. Titmus
BrownGreer PLC, Proposed Notice Agent

Enclosures

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Attorneys for Defendant Cahill Gordon & Reindel LLP

Exhibit 3

CAFA Notice Delivery Confirmation

CAFA Notice Service List - CAFA Notice: <i>Williams v. BASF Catalysts LLC, et al.</i> , C.A. No. 2:11-cv-01754 (D.N.J)										
Last Name	First Name	Office	Address 1	Address 2	Address 3	City	State	Zip Code	Date Delivered	
Barr	William	United States Office of the Attorney General	U. S. Department of Justice	950 Pennsylvania Ave NW		Washington	DC	20530-0001	8/12/2020	
Clarkson	Kevin	Office of the Attorney General	1031 W. 4th Avenue	Suite 200		Anchorage	AK	99501-1994	8/10/2020	
Marshall	Steve	Office of the Attorney General	501 Washington Avenue	P. O. Box 300152		Montgomery	AL	36130-0152	8/7/2020	
Rutledge	Leslie	Office of the Attorney General	323 Center Street	Suite 200		Little Rock	AR	72201-2610	8/12/2020	
Ale	Talauuga	Department of Legal Affairs	Executive Office Building	3rd Floor		Pago Pago	AS	96799	8/31/2020	
Brnovich	Mark	Office of the Attorney General	2005 N. Central Ave			Phoenix	AZ	85004-2926	8/7/2020	
Becerra	Xavier	Office of the Attorney General	Consumer Law Section	455 Golden Gate Avenue	Suite 11000	San Francisco	CA	94102	8/10/2020	
Weiser	Phil	Office of the Attorney General	Ralph L. Carr Colorado Judicial Center	1300 Broadway	10th Floor	Denver	CO	80203	8/12/2020	
Tong	William	Office of the Attorney General	165 Capitol Avenue			Hartford	CT	06106	8/11/2020	
Racine	Karl	Office of the Attorney General	441 4th Street NW	Suite 1100S		Washington	DC	20001	8/18/2020	
District of Columbia Bar		Office of Disciplinary Counsel	515 Fifth Street NW	Building A	Suite 117	Washington	DC	20001	8/10/2020	
Jennings	Kathy	Office of the Attorney General	Carvel State Office Building	820 North French Street		Wilmington	DE	19801	8/7/2020	
Moody	Ashley	Office of the Attorney General	The Capitol	PL-01		Tallahassee	FL	32399-1050	8/11/2020	
Carr	Chris	Office of the Attorney General	40 Capitol Square SW			Atlanta	GA	30334-3300	8/7/2020	
Camacho	Leevin	Office of the Attorney General	590 S. Marine Corps Dr., Suite 901			Tamuning	GU	96913	8/5/2021	
Connors	Clare	Department of the Attorney General	425 Queen Street			Honolulu	HI	96813	8/10/2020	
Miller	Tom	Office of the Attorney General	Hoover Building	1305 East Walnut Street		Des Moines	IA	50319	8/7/2020	
Wasden	Lawrence	Office of the Attorney General	700 W. Jefferson Street	Suite 210	PO Box 83720	Boise	ID	83720-0010	8/7/2020	
Raoul	Kwame	Office of the Attorney General	100 West Randolph Street			Chicago	IL	60601	8/11/2020	
Hill, Jr.	Curtis	Office of the Attorney General	Indiana Government Center South	302 West Washington Street	5th Floor	Indianapolis	IN	46204	8/10/2020	
Schmidt	Derek	Office of the Attorney General	120 SW 10th Ave	2nd Floor		Topeka	KS	66612	8/7/2020	
Cameron	Daniel	Office of the Attorney General	700 Capitol Avenue	Capitol Building, Suite 118		Frankfort	KY	40601	8/11/2020	
Landry	Jeff	Office of the Attorney General	1885 North Third Street			Baton Rouge	LA	70802	8/11/2020	
Healey	Maura	Office of the Massachusetts Attorney General	ATTN: CAFA Coordinator/General Counsel's Office	One Ashburton Place		Boston	MA	02108	8/10/2020	
Frosh	Brian	Office of the Attorney General	200 St. Paul Place			Baltimore	MD	21202-2202	8/14/2020	
Frey	Aaron	Office of the Attorney General	6 State House Station			Augusta	ME	04333	8/12/2020	
Nessel	Dana	Office of the Attorney General	G. Mennen Williams Building	525 W. Ottawa Street	P.O. Box 30212	Lansing	MI	48909-0212	8/6/2020	
Ellison	Keith	Office of the Attorney General	445 Minnesota Street	Suite 1400		St. Paul	MN	55101	8/8/2020	
Schmitt	Eric	Office of the Attorney General	Supreme Court Building	207 W. High Street	P.O. Box 899	Jefferson City	MO	65102	8/7/2020	
Manibusan	Edward	Office of the Attorney General	Pagan Loop	Capitol Hill		Saipan	MP	96950	8/11/2020	
Fitch	Lynn	Office of the Attorney General	Walter Sillers Building	550 High Street	Suite 1200	Jackson	MS	39201	8/24/2020	
Fox	Tim	Office of the Attorney General	Justice Building, Third Floor	215 North Sanders	PO Box 201401	Helena	MT	59620-1401	8/10/2020	
Stein	Josh	Office of the Attorney General	9001 Mail Service Center			Raleigh	NC	27699-6400	8/14/2020	
Stenhjem	Wayne	Office of the Attorney General	State Capitol	600 East Boulevard Avenue	Dept. 125	Bismarck	ND	58505	8/7/2020	
Peterson	Doug	Office of the Attorney General	2115 State Capitol	P.O. Box 98920		Lincoln	NE	68509	8/7/2020	
MacDonald	Gorden	Office of the Attorney General	33 Capitol St			Concord	NH	03301	8/7/2020	
Grewal	Gurbir S.	Office of the Attorney General	RJ Hughes Justice Complex	25 Market Street	Box 080	Trenton	NJ	08625-0080	8/11/2020	
Balderas	Hector	Office of the Attorney General	Villagra Building	408 Galisteo Street		Santa Fe	NM	87501	8/7/2020	
Ford	Aaron	Office of the Attorney General	Old Supreme Court Building	100 North Carson Street		Carson City	NV	89701	8/11/2020	
James	Letitia	Office of the Attorney General	Office of the Attorney General	The Capital	2nd Floor	Albany	NY	12224	8/17/2020	
Grievance Committee for the Ninth Judicial District	Grievance Committee for the Ninth Judicial District		399 Knollwood Road	Suite 200		White Plains	NY	10603	8/8/2020	
New York Bar	Departmental Disciplinary Committee	Supreme Court Appellate Division	First Judicial Department	180 Maiden Lane	17th Floor	New York	NY	10038	8/6/2020	
Yost	Dave	Office of the Attorney General	State Office Tower	30 E. Broad Street	14th Floor	Columbus	OH	43266-0410	8/10/2020	
Hunter	Mike	Office of the Attorney General	313 NE 21st Street			Oklahoma City	OK	73105	8/10/2020	
Rosenblum	Ellen F.	Office of the Attorney General	Oregon Department of Justice	1162 Court Street NE		Salem	OR	97301	8/7/2020	
Shapiro	Josh	Office of the Attorney General	16th Floor, Strawberry Square			Harrisburg	PA	17120	8/7/2020	
Martinez	Ines	Office of the Attorney General	P.O. Box 9020192			San Juan	PR	00902-0192	8/10/2020	
Neronha	Peter	Office of the Attorney General	150 South Main Street			Providence	RI	02903	8/11/2020	
Wilson	Alan	Office of the Attorney General	P. O. Box 11549			Columbia	SC	29211-1549	8/7/2020	
Ravnsborg	Jason	Office of the Attorney General	1302 E. Highway 14	Suite 1		Pierre	SD	57501-8501	8/7/2020	
Slatery III	Herbert	Office of the Attorney General and Reporter	P.O. Box 20207			Nashville	TN	37202	8/11/2020	
Paxton	Ken	Office of the Attorney General	Capitol Station	P. O. Box 12548		Austin	TX	78711-2548	8/7/2020	
Reyes	Sean	Office of the Attorney General	State Capitol	350 North State Street	Suite 230	Salt Lake City	UT	84114-2320	9/10/2020	
Herring	Mark	Office of the Attorney General	202 North Ninth Street			Richmond	VA	23219	8/10/2020	
George	Denise	Office of the Attorney General	34-38 Kronprindsens Gade	GERS Building	2nd Floor	St. Thomas	VI	00802	8/7/2020	
Donovan	TJ	Office of the Attorney General	109 State Street			Montpelier	VT	05609	8/10/2020	
Ferguson	Bob	Office of the Attorney General	1125 Washington Street SE	P.O. Box 40100		Olympia	WA	98504-0100	8/7/2020	
Kaul	Josh	Office of the Attorney General	Wisconsin Department of Justice		P.O. Box 7857	Madison	WI	53707-7857	8/7/2020	
Morrissey	Patrick	Office of the Attorney General	State Capitol	Building 1	Room E-26	Charleston	WV	25305	8/7/2020	
Hill	Bridget	Office of the Attorney General	State Capital Building	2320 Capital Avenue		Cheyenne	WY	82002	8/7/2020	

Exhibit 4

Long-Form Notice

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Williams v. BASF Catalysts LLC, et al, C.A. No. 2:11-cv-01754.

If you or a close relative were ever a plaintiff in a lawsuit against Eastern Magnesia Talc Company, Engelhard Corporation or BASF Catalysts, LLC based on an asbestos-related personal injury or wrongful death due to exposure to Emtal Talc, you could receive a payment from a proposed Class Action Settlement.

A Federal Court has authorized this Notice. This is not a solicitation from a lawyer.

- A proposed Class Action Settlement (“the Settlement”) will provide a Settlement Fund of \$72.5 million to pay claims submitted by asbestos-related personal injury claimants or their surviving heirs, if deceased, who are Class Members. The fund will be established by the Court authorizing this Notice.
- To qualify for monetary compensation, a person must:
 - at any time between March 8, 1984 and March 29, 2011, have filed and served a lawsuit against Engelhard Corporation (“Engelhard”), or one of its subsidiaries (such as Eastern Magnesia Talc Company), or BASF Catalysts, LLC (“BASF”), which acquired Engelhard and its subsidiaries in June 2006, seeking asbestos bodily injury compensation or other relief arising from exposure to Emtal Talc, and
 - before March 30, 2011, have either:
 - (A) voluntarily dismissed or terminated the lawsuit as to Engelhard/BASF after the suit was filed, including any voluntary dismissal or release of claims due to settlement; **OR**
 - (B) had their lawsuit as to Engelhard/BASF involuntarily dismissed by the presiding Court.

“Person” includes any individual or entity who has or had the right to claim damages relating to Emtal Talc exposure either in their own right because of an asbestos bodily injury allegedly sustained as result of claimed exposure to Emtal Talc in any form or

manner, or as an individual who may had have a right to damages based on an asbestos injured person’s injury or death such as, spouses, heirs, legatees, personal representatives, or wrongful death beneficiaries.

Authorized representatives of deceased, legally incapacitated or incompetent person qualifying as a Class Member and family members of deceased persons qualifying as a Class Member who meet certain criteria may also file claims for monetary awards.

- Engelhard mined, milled, and marketed Emtal talc in the United States from 1967 through 1984, and sold and distributed it to companies for various industrial and commercial applications. Exposure to Emtal Talc may have happened in a variety of manners and occurred occupationally. This lawsuit, however, **does not** involve exposure to any personal cosmetic product such as baby, body, or talcum powder.
- Your or your family member’s asbestos personal injury claim lawyer or law firm may have information to assist you in determining if you qualify as class member.
- Your legal rights are affected whether you act or don’t act. **Read this Notice carefully.**
- These rights and options—and the deadlines within which to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after any appeals are resolved. Please be patient.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
STAY IN THE SETTLEMENT CLASS AND SUBMIT A CLAIM BY January 15, 2021	<p><u>The only way to get a payment.</u></p> <p>To receive monetary benefits, you will need to timely submit a claim to the Settlement Fund’s Administrator. However, if the Court approves the Settlement you will be bound by the terms and release contained in the Settlement even if you do not submit a claim, unless you exclude yourself as described below.</p>
EXCLUDE YOURSELF	<p>Get no payment.</p> <p>This option allows you to pursue a lawsuit against defendant BASF, defendant Cahill Gordon & Reindel LLP and any of their co-defendants about the legal claims in this case. It also is the only option that allows you to ever be part of any other lawsuit against BASF or the other parties being released under the Settlement Agreement for any asbestos-related personal injury or wrongful death claim, whether the injury or claim is known or unknown, including any potential subsequent asbestos-related personal injury or wrongful death claim that may arise in the future.</p>
OBJECT	Write to the Court if you do not like the Settlement.

GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.
DO NOTHING	If you do nothing you will remain in the Class Action as a Class Member and will not, in the future, be able to pursue any other lawsuit against BASF, Cahill or the other parties being released under the Settlement Agreement for any asbestos injury or wrongful death claim, known, unknown or potential, including any possible secondary disease or second asbestos injury claim that may arise in the future. If you do not timely file a complete Claim Submission with the Administrator, you will not receive compensation. The deadline to file a Claim Submission is January 15, 2021.

Important dates and deadlines:	
Class Membership Exclusion (opt-out) Deadline	December 16, 2020
Claim Submission Deadline	January 15, 2021
Objection and Intervention Submission Deadline	December 16, 2020
Fairness Hearing	July 29, 2021

This Notice is only a summary of the Settlement Agreement, the Plan of Distribution and your rights. You are encouraged to carefully review the complete Settlement Agreement and Plan of Distribution at www.EmtalTalcSettlement.com. The Settlement Agreement and Plan of Distribution are also on file in the office of the Clerk of the Court for the U.S. District Court for the District of New Jersey in Newark, New Jersey (see Question 28 for the address). You can also get this information by calling 1-888-401-1929 and requesting copies.

Please do not write, email or call the Court or Clerk of Court for additional information.

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BASIC INFORMATION

1. Why did I get this Notice?

You, someone in your family, or someone for whom you were a personal representative may have been a party in an asbestos injury or wrongful death lawsuit filed between March 8, 1984 and March 29, 2011, that named as a defendant Engelhard Corporation (“**Engelhard**”) or BASF Catalysts, LLC (“**BASF**”) or one of their subsidiary or affiliated companies (identified later on in this document), which lawsuit was voluntarily or involuntarily dismissed. BASF acquired Engelhard Corporation in June 2006 through a merger transaction. (Collectively Engelhard, BASF and its subsidiary/affiliates are referred to as “**Engelhard/BASF**”). During this period of time, numerous lawsuits were filed against Engelhard/BASF alleging that asbestos injuries were caused through exposure to Emtal Talc, the brand name under which Engelhard’s subsidiaries marketed the talc it produced. These now-dismissed lawsuits together involved thousands of individuals and are referred to as the “**Underlying Lawsuits.**”

After the Underlying Lawsuits were dismissed or resolved, a dispute developed about whether information concerning the existence of asbestos in Emtal Talc was concealed or misrepresented by Engelhard/BASF and its national defense coordination law firm, Cahill Gordon & Reindel (“**Cahill**”), which in turn may have led to the unfair dismissal of asbestos lawsuits against Engelhard/BASF. The dismissals of these Underlying Lawsuits as to Engelhard/BASF are presently the subject of a proposed class action lawsuit pending in the United States District Court for the District of New Jersey (the “**Court**”). The case is known as *Williams, et al v BASF Catalysts, LLC, et. al*, C.A. No. 2:11-cv-01754.

The people who sued are called the **Plaintiffs**. The people or companies they sued are called the **Defendants**. They are more fully identified below.

The Court sent you this Notice because you have a right to know about a proposed settlement of a class action lawsuit and about your options before the Court decides whether to give final approval of the Settlement. If the Court approves the Settlement and after any objections and appeals are resolved, an Administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them, along with what claims and rights you would surrender in exchange if the Settlement is approved by the Court and implemented.

2. What is this lawsuit?

This is a federal court class action pending in the United States District Court for the District of New Jersey since 2011. The Plaintiffs contend that the Defendants named in the lawsuit misled the attorneys representing them or their respective deceased family members in Underlying Lawsuits against Engelhard/BASF about the existence of asbestos in Emtal Talc to support Engelhard/BASF’s defense that Emtal Talc did not contain asbestos. Plaintiffs contend these actions led to unfair settlements and/or dismissals of their or their deceased relatives’ Underlying Lawsuits as to Engelhard/BASF, as well as to unfair settlements and dismissals of other asbestos claimants’ lawsuits against Engelhard/BASF similar to theirs.

“**Emtal Talc,**” was a brand of industrial talc sold by a subsidiary of Engelhard that was used in the manufacturing of various industrial products, such as tires and other rubber goods, paints, plaster, caulking, and auto-body repair compounds. This lawsuit *does not* involve exposure to any personal cosmetic product such as baby, body or talcum powder.

Engelhard was a chemical company that closed its talc mine in 1984. The Emtal Talc business was a small business within Engelhard, itself a large mining and minerals trading company. BASF bought Engelhard in June 2006.

Plaintiffs claim that from 1984 until 2009, Engelhard (BASF acquired Engelhard in 2006), its former national law firm Cahill, and employees of the two companies, made misstatements or concealed evidence about the existence of alleged asbestos in Emtal Talc and failed to disclose related information to plaintiffs, their lawyers, and courts in the Underlying Lawsuits. Plaintiffs claim that due to these misstatements and omissions, the plaintiffs in the Underlying Lawsuits either (1) voluntarily agreed to dismiss or settle their cases for less than they otherwise would have accepted or (2) had their cases involuntarily dismissed by court order upon motions filed by the Defendants. Defendants deny Plaintiffs’ allegations and dispute that any statements about Emtal Talc affected the outcome of the Underlying Lawsuits because (1) the claims in the Underlying Lawsuits were without merit, (2) the amount of asbestos in Emtal Talc, as reported in historical documents, could not have caused harm to human health, and (3) many of the Underlying Lawsuits were resolved for fixed amounts irrespective of the alleged asbestos content of the talc or the number of talc defendants. Defendants further contend that many of the complaints merely named Engelhard without any specific allegations regarding product identification, exposure, or damages. Plaintiffs dispute these arguments.

3. What is a class action?

In a class action, one or more persons, the named plaintiffs (who are also called proposed “class representatives”) sue on behalf of themselves and other persons with similar claims. All of these people together are the proposed “Class” or “Class Members.” When a class action is settled, one Court resolves the issues for all Class Members (in the settlement context, “Settlement Class Members”), except for those who exclude themselves (opt out) from the Settlement. U.S. Magistrate Judge Joseph A. Dickson is in charge of this class action. In this case, the proposed class representatives are Kimberlee Williams, Gayle Williams, Marilyn L. Holley, Sheila Ware, Donnette Wengerd, and Rosanne Chernick, who are heirs to the persons who originally sued Engelhard in the Underlying Lawsuits. Excluding yourself (opting out) means that you will not receive any benefits from the Settlement. The process for excluding yourself (opting out) is described in Question 19.

4. What are the claims, issues and defenses in this class action?

Plaintiffs claim that the Defendants caused harm to Class Members through misstatements or concealing evidence in connection with the Underlying Lawsuits brought against Engelhard/BASF after March 7, 1984 and before March 29, 2011. Plaintiffs allege that, in defending these cases, Defendants claimed through communications to courts and plaintiffs’ lawyers, discovery responses, affidavits, and pleadings that:

- Emtal Talc did not contain asbestos;

- No evidence existed that Emtal Talc contained asbestos; and
- No Engelhard employee had ever testified about whether Emtal Talc contained asbestos.

Through discovery in this lawsuit, Class Counsel obtained documents that purported to identify asbestos in some samples of Emtal Talc as well as testimony from former Engelhard scientists and reports from outside laboratories that purported to show asbestos in Emtal Talc. Plaintiffs claim that this information and the documents identified were wrongly concealed from plaintiffs in the Underlying Lawsuits in answers to discovery, in communications with Engelhard's lawyers, and in motions filed with courts seeking dismissal of the Underlying Lawsuits. Plaintiffs further claim that Defendants supported these statements with affidavits they drafted and disseminated to convince plaintiffs in the Underlying Lawsuits and courts that Emtal Talc did not contain asbestos. Plaintiffs claim that, as a result of these misstatements and Defendants' failure to disclose this evidence, plaintiffs in the Underlying Lawsuits (1) agreed to dismiss their personal injury claims against Engelhard (and later BASF); (2) settled them for less than they otherwise would have accepted; or (3) had their cases dismissed by court order for lack of proof that Emtal Talc contained asbestos.

For their part, BASF and Cahill deny these contentions. They claim that the amount of asbestos reported to be found in the documents identified by class counsel are insufficient to cause harm to human health, dispute the merit of the Underlying Lawsuits, dispute the validity of some tests that Plaintiffs claim identify asbestos in certain samples of Emtal Talc, and dispute that any statements about Emtal Talc affected the outcome or settlement amounts of the Underlying Lawsuits. BASF also claims that it was not aware of the facts alleged by the Plaintiffs in this case when it bought Engelhard in 2006 and that BASF did not learn of the circumstances giving rise to Plaintiffs' allegations in this case until 2009. Upon discovery of certain documents and information concerning Emtal Talc in 2009, BASF and its former counsel separated, and BASF retained new counsel which has represented it since 2009. BASF also states that it no longer defends Emtal Talc cases on the basis that there is no evidence that Emtal Talc contained asbestos. Nevertheless, BASF believes and continues to defend these cases on various grounds, including that there is no evidence that the reported levels of asbestos in Emtal Talc could cause harm to human health.

The *Williams* Plaintiffs acknowledge the challenges to succeeding in this litigation. For instance, Class Members would need to prove that plaintiffs in the Underlying Lawsuits were damaged by an evidential record in those cases that did not contain the evidence Defendants are alleged to have concealed or made misstatements about. In addition, the District Court has ruled that plaintiffs would be required to waive their attorney-client privilege to allow for discovery of otherwise confidential communications with their counsel in their Underlying Lawsuits as to what effect, if any, the alleged misrepresentations had on the plaintiffs or their lawyers in deciding to dismiss or settle with Engelhard in the Underlying Lawsuits. The District Court in *Williams* has already ordered discovery and disclosure by the named Plaintiffs and certain other class members of these types of attorney-client communications.

Defendants also point to evidence developed during discovery in this case of modest settlements amounts (including in the hundreds of dollars) that some plaintiffs accepted in Underlying Lawsuits from other talc manufacturers despite evidence that their talc contained

asbestos. These modest settlement amounts accepted from defendants for whom there was proof that their products contained asbestos were similar to what Engelhard paid some plaintiffs. Defendants also claim that case files from the Underlying Lawsuits produced during discovery give rise to other defenses that they could assert to support their contention that Defendants' actions did not cause the settlement or dismissal of the Underlying Lawsuits, such as (1) the absence of evidence of a plaintiff's exposure to Emtal Talc; (2) that some claims were dismissed as untimely filed; (3) that other claims were filed in the wrong jurisdiction; or (4) claims were dismissed due to some other procedural or substantive reason not related to the asbestos content of Emtal Talc.

Earlier in this litigation, Plaintiffs also claimed that Engelhard and Cahill had destroyed documents relating to Emtal Talc. This assertion was made on Plaintiffs' good-faith belief at the time that documents that should have existed no longer exist. However, Plaintiffs acknowledge that, through BASF's efforts to address Plaintiffs' allegations, BASF has since located thousands of documents relating to Emtal Talc, including testing documents that Plaintiffs believe show there was asbestos in Emtal Talc, and documents that Plaintiffs claim were not provided to the plaintiffs in the Underlying Lawsuits. BASF has also located various other documents that Plaintiffs had believed were destroyed. Plaintiffs acknowledge that if they were to continue to allege document destruction, they would have to contend with the fact that BASF has located many additional documents since this litigation began. Plaintiffs further acknowledge that the essential key facts are now in the public domain from discovery in *Williams* and other litigation. On the other hand, BASF would have to contend with Plaintiffs' assertion that some number of documents still have not been located and, therefore, were not produced in the Underlying Lawsuits.

5. How many class members are there?

A precise number of potential Class Members is not known due to the passage of time since the Underlying Lawsuits were first filed and dismissed, the deaths of many plaintiffs and their lawyers in the Underlying Lawsuits and the state or loss of records. Based on case census information obtained in discovery in *Williams*, case information provided by some of the law firms that represented claimants in the Underlying Lawsuits, and the review of other lawsuit complaints in which hundreds or thousands of purported asbestos claimants were joined into one lawsuit, Verus LLC, the asbestos claims administration firm that is advising Class Counsel, has estimated that there are 18,721 potential class members. This estimated number includes both the individuals who were the persons in the Underlying Lawsuits claiming to have suffered an asbestos-related personal injury or death ("**Injured Persons**") as well as persons who sued Engelhard/BASF derivatively based upon the Injured Person's asbestos-related personal injury or death, such as a spouse or the children or personal representative a deceased Injured Person (these are defined as "**Derivative Claimants**"). Based on an analysis of information produced in discovery, social security numbers and claim records of potential class members who have filed asbestos bodily injury claims against defendants other than Engelhard/BASF, Verus estimates the number of class members who are Injured Persons is in the range of 7,500 to 8,500 persons.

6. Why is there a settlement?

After extensive litigation spanning more than nine years, which included an appeal to the Third Circuit Court of Appeals, extensive discovery (including the production of hundreds of thousands of pages of documents), many depositions, several protracted discovery disputes, and previously failed settlement initiatives, the Plaintiffs and Defendants have agreed to this Settlement.

A settlement is an agreement between a plaintiff and a defendant to resolve a lawsuit. Settlements conclude without the court or a jury ruling in favor of the plaintiff or the defendant. A settlement allows the parties to avoid the cost and risk of a trial, as well as the delays of litigation.

If the Court approves this Settlement, the litigation between the Settlement Class Members and the Defendants is concluded. Only Settlement Class Members are eligible for the benefits summarized in this Notice. The Defendants will no longer be legally responsible to defend against the claims by Settlement Class Members made in this litigation.

The Court has not and will not decide in favor of the Plaintiffs or the Defendants. By reviewing this Settlement, the Court is not making and will not make any findings that any law was broken or that the Defendants did anything wrong. By entering into the Settlement Defendants are not admitting any of the claims made against them, which they continue to completely deny. Conversely, the Plaintiffs are not conceding that any of their claims against Defendants are invalid or without merit.

Under the Settlement, BASF and Cahill will contribute a total of \$72.5 million to a Settlement Fund for the benefit of the class identified in Question 7. The monetary awards to Settlement Class Members will vary based on the type of asbestos-related injury that the individual claimant developed. Details on how this Settlement Fund will be allocated and disbursed is described in a proposed Plan of Distribution that has been submitted to the Court in connection with the Settlement. In addition to funding the Settlement Fund, BASF and Cahill will pay the costs of providing notice to the class up to certain limits stated in Settlement Agreement, administration of the claims process, incentive awards to the Class Representatives, and will pay Class Counsel's attorneys' fees and cost reimbursement allowed by the Court.

The Class Representatives and Class Counsel (see Question 22) believe that the proposed Settlement is best for everyone involved. The factors that Class Counsel considered included the uncertainty and delay associated with continued litigation, including trial and appeals, as well as the uncertainty of particular legal issues that are yet to be determined by the Court. Class Counsel balanced these and other substantial risks in determining that the Settlement is fair, reasonable and adequate in light of all circumstances and in the best interests of the Settlement Class Members.

WHO IS INCLUDED IN THE SETTLEMENT?

To get money from the Settlement, you must first qualify as a Class Member.

7. How do I know I am a class member?

For settlement purposes the Court has defined the Class in this case to consist of the following:

All Persons within the United States and its territories who after March 7, 1984 and before March 30, 2011 filed and served a lawsuit against Engelhard/BASF seeking asbestos bodily injury or other relief arising from its Emtal Talc products, and who before March 30, 2011 either: (A) had voluntarily dismissed or terminated the lawsuit as to Engelhard/BASF either before or after the suit was filed, including any voluntary dismissal or release of claims due to settlement; or (B) had their lawsuit as to Engelhard/BASF involuntarily dismissed.

The date on which a voluntary dismissal or termination occurred for purposes of determining class membership is the earlier of either (i) the date on which the agreement or consent by the plaintiff or his/her counsel to dismiss or terminate the lawsuit occurred; or (ii) the date on which the dismissal or termination of the lawsuit was entered by or in the court in which it was pending.

A. Which Engelhard/BASF companies had to be named in the Underlying Lawsuits in order to qualify as a Class Member?

In determining if a prior asbestos lawsuit qualifies a person as a Class Member, “Engelhard/BASF” means and includes the following companies: BASF Catalysts LLC, BASF Corporation, BASF CE, BASF SE, Engelhard Corporation, Engelhard Industries, Engelhard Minerals & Chemicals Corporation, Minerals & Chemicals Philip Corporation, Eastern Magnesia Talc Co., Porocel Corporation and Pita Realty Ltd.

B. What if the injured claimant named in the Underlying Lawsuit is dead?

The word “Person” in the definition includes any individual (or their estate if deceased) who claimed damages relating to an asbestos bodily injury allegedly sustained from exposure to Emtal Talc in any form or matter. This exposed, injured party (or his or her estate) is referred to in the Settlement as the “Injured Party” and in the Plan of Distributions as the “Primary Claimant”.

Where the Injured Party is deceased, his or her personal representative--e.g.- Executor(trix) or Administrator(trix)--is a Class Member and is authorized to submit a claim submission for monetary compensation to the Settlement Fund.

C. Do parties who sued Engelhard/BASF in Underlying Lawsuits as spouses or wrongful death claim beneficiaries qualify as class members?

Yes. The word “Person” in the class definition includes the spouse, personal representative and wrongful death beneficiaries of the individual in the Underlying Lawsuits who is claimed to have developed an asbestos-related injury where the person was named in the Underlying Lawsuit or the suit brought on his behalf in such capacity. Such parties are referred to as Derivative Claimants in the Settlement and there is a compensation component provided in the proposed Plan of Distribution for Derivative Claimants.

For claims administration purposes all Derivative Claimants of an Injured Person who is the subject of an Underlying Lawsuit are treated as a group under the proposed Plan of Distribution.

D. Are the attorneys who represented the claimants in the Underlying Lawsuits also class members?

No. The word “Person” in the class definition does not include any attorney or law firm that represented plaintiffs in Underlying Lawsuits against Engelhard/BASF.

8. What if I am not sure whether I am included in the Settlement Class?

If you are not sure whether you are included, you can obtain information or assistance in a number of ways.

You may contact the attorneys who represented you or your family member in the Underlying Lawsuit and see if they can assist you. Where the Settlement’s Administrator, Verus LLC, has information that a lawyer or law firm which filed Emtal Talc asbestos suits is still in practice or has a known and confirmed successor, the Administrator has taken steps to notify the lawyer and law firm (or known successors) of this class action lawsuit and proposed Settlement. Verus has taken steps to provide these lawyers with details on the Settlement and, where known, which of the lawyer’s or law firm’s clients may qualify as a class member.

You can contact Verus LLC free of charge with questions or for more information by calling 1-888-401-1929 and asking for help regarding the Emtal Talc Settlement. You may also write with questions to Emtal Talc Settlement c/o Verus LLC, 3967 Princeton Pike, Princeton, NJ 08540. During the time period that claims may be submitted to the Administrator, if a member of the public has a credible and good faith reason and belief that he or she may be a class member but is reasonably unable to secure necessary information to determine if he or she is, on written request to the Administrator providing and certifying these facts, along with appropriate identification information, including social security numbers, the Administrator, in turn, will make a reasonable computer word search of a searchable set of Underlying Lawsuit documents provided by the Defendants during discovery in the class action to determine if a possible match exists. If there is a match, the Administrator will provide the person requesting assistance with access for a limited amount of time to search and download documents supporting the person’s claim to class membership. There is a form for making such requests available on the Settlement’s website or that can be obtained by calling or writing the Administrator.

For more information you can also visit the Settlement’s website, www.EmtalTalcSettlement.com.

You also may fill out and submit the Settlement claim submission form described at Questions 14 and 15, to see if you qualify.

9. Do I need to hire a lawyer to represent me in the Settlement?

Class Counsel who are identified at Question 22 below are responsible for all of the common interests of the Class Members. Class Counsel filed and prosecuted this lawsuit,

negotiated the Settlement and represent all of the common interests of the Class. However, Class Counsel are **not** responsible for and will not represent you individually in the class action or in making your individual claim to the Settlement Fund for the monetary payments that are described below.

You have the right but are not required to hire your own lawyer to represent you in this class action or in making your individual claim to the Settlement Fund for monetary payments that are described below. Should you hire a lawyer, you will be responsible for paying the fee you agree upon with that lawyer which may reduce the amount of any payment to which you may be entitled from the Settlement Fund. For more information on compensation to be paid to lawyers please refer to Question 23 below.

THE SETTLEMENT'S BENEFITS—WHAT YOU GET AND WHAT YOU GIVE UP

10. What does the Settlement provide?

Defendants BASF and Cahill have agreed to create and fully fund a non-reversionary Settlement Fund of \$72.5 million for use and benefit of Settlement Class Members which will be used for the payment of claims to Settlement Class Members pursuant to, and in accordance with a Plan of Distribution approved by the Court. (See Question 11 for a summary of the Plan.) In addition to the Settlement Amount, these two Defendants have agreed to pay up to \$3.5 million to cover the reasonable and necessary costs of designing, establishing and carrying out the Plan of Notice and the Plan of Administration. BASF and Cahill have further agreed for the benefit of the Settlement Class Members to pay Class Counsel's attorneys' fees as approved by Court up to \$22.5 million together with reimbursement of Class Counsel's litigation costs approved by the Court up to the sum of \$1.2 million.

Defendants BASF and Cahill have additionally agreed as part of the Settlement that copies of the following Emtal Talc litigation materials are and will remain in the public domain: (a) the *Williams Action's* pleadings; (b) the *Williams Action's* non-privileged depositions (including non-privileged exhibits); (c) non-privileged documents produced or subpoenaed during discovery in the *Williams Action* and (d) copies of the public non-privileged depositions (including non-privileged exhibits) taken in the New Jersey Superior Court Asbestos Program's *Sampson, Comandini, Fuschino, Paduano* and *Volk* lawsuits. Such documents may be made available by Class Counsel or their designee to any person, except as limited by any operative sealing orders or confidentiality orders.

11. When and how will the Settlement Fund be distributed to Settlement Class Members?

If the Settlement is approved and becomes final, the Settlement Fund will be distributed according to a Plan of Distribution approved by the Court. As part of the class action settlement approval proceedings, the Court is considering a proposed Plan of Distribution which is described in this Notice. A copy of the Proposed Plan is available on the Settlement's website or can be obtained from the Administrator by calling or writing it to request a copy. The Plan of Distribution was designed by Class Counsel with the assistance of consultants on asbestos claims facility design and operations, including Verus LLC. The Defendants are not responsible for the

Settlement Fund's distribution design, allocations, adjudications or payments and will have no role in the Settlement Fund's distribution once the Settlement is approved.

The Settlement Fund's claims facility and allocation and distribution processes will be managed by a Settlement Trustee appointed by the Court who will also be appointed to serve as a Special Master with adjudicatory powers regarding the fund's awards and payments as is necessary to carry out the Plan. The Court has been asked to appoint the Honorable Marina Corodemus, J.S.C (Retired) to fill this position. She is a former New Jersey Superior Court judge who presided over New Jersey's Mass Tort Program. A biography of Judge Corodemus is available on the Settlement's website. Currently Judge Corodemus is serving as the Court's Interim Settlement Trustee. In this capacity, she is setting up and conducting the interim claim administration operations and performing the duties required to be performed under the parties Settlement Agreement and the Court's Preliminary Approval Order during the time the Court is considering the pending request for final approval of the Settlement.

The Settlement Trustee will be assisted in its execution of the Plan of Distribution by a third-party claims administration company appointed by the Court. The Court has been asked to appoint Verus LLC of Princeton, New Jersey as the Administrator. Verus LLC has served as a consultant to Class Counsel in designing the Plan of Distribution. The Settlement Fund's administrator is authorized to receive, process and make provisional determinations of claims to the Fund (which are all subject to review, modification or approval by the Settlement Trustee), establish and maintain the Settlement Fund's claims processes, books, records and internal controls, handle the Fund's routine inquiries and communications, and make claim disbursements once claim distribution schedules are approved by the Court. Verus is currently serving as the Interim Administrator to perform certain administration operations and duties relating to the proposed Settlement that are required to be performed under the parties' Settlement Agreement and the Court's Preliminary Approval Order.

The Settlement Trustee under the Plan and Settlement Agreement is authorized, subject to Court approval, to retain a lien resolution company ("Lien Administrator"). The Lien Administrator will, as a settlement benefit, assist each Settling Class Member claimant to determine the existence of Government Liens and the amounts needed to clear and resolve such liens. The terms of the Settlement Agreement require that a claimant to the Fund must clear these Government Liens. The Court has been asked to appoint Edgar C. Gentle, III, Esq. and his law firm, Gentle, Turner, Sexton & Harbison, LLC, to serve as Lien Administrator.

The Settlement Trustee, Administrator and Lien Administrator are each required to at all times administer the Plan and distribute the Settlement Fund according to its terms under the auspices of the Court.

12. How much money will I receive in the Settlement?

The following sections summarize the Plan of Distribution, but you should read and refer to the Plan for details as that is the controlling document. A copy of the proposed plan is available on the Settlement Fund's website or a hard copy may be obtained from the Administrator on request by writing or calling.

A. How will Settlement Fund payment award amounts be determined?

The Plan establishes three compensation programs to which Settlement Class Members meeting defined eligibility criteria may apply for compensation award payments (each program being referred to as a “Part”). The Settlement Fund’s Part A program provides Base Compensation Payments to Settlement Class Members who can establish that the claimant or claimant’s decedent during the Class Period filed an Underlying Lawsuit against Engelhard/BASF which credibly asserted in good faith an asbestos injury caused by alleged exposure to Emtal Talc (“**Base Payments**”). The Plan’s Part B program provides compensation payments to Settlement Class Members who satisfy Part A and also present sufficient evidence of an asbestos bodily injury sustained by them (or if applicable, their decedent). The Plan’s Part C program establishes an Extraordinary Injury Fund or “EIF” from which the Settlement Trustee may, in exceptional cases, make a discretionary supplemental compensation payment to mesothelioma injury claimants subject to eligibility guidelines and limitations as set forth in this Plan.

There are criteria and rules in the Plan as to who can make a claim and how. You should read the Plan for the details on these compensation programs and Settlement Class Members’ rights under the Plan.

B. How Much Money will I receive under the Plan?

The Settlement’s Plan of Distribution has three parts for allocating the Settlement Fund which are described below. The amount of money a Settlement Class Member will receive depends upon which parts he or she qualifies for and the total number of claims that are approved under each part.

1. Payments under the Plan’s Part A program.

The Plan’s Part A program provides Base Payments from a \$6.25 million sub-fund allocation of the Settlement Fund Amount to Settlement Class Members whose Underlying Lawsuits were dismissed and who are releasing all claims related to the Underlying Lawsuits, including the *Williams* Class Action Claims, against the Released Parties. Settlement Class Members who were Injured Persons (which includes the personal representatives of a deceased Injured Person) in the Underlying Lawsuits are referred to as “Primary Claimants”. Each Primary Claimant who timely submits a claim for Part A compensation and establishes that his or her subject Underlying Lawsuit presented a good faith credible claim for injuries allegedly caused by exposure to Emtal Talc will receive a payment of up to \$500 from the Part A sub-fund. Generally speaking, claims on behalf of a deceased Injured Person must be filed by the deceased person’s estate representative (who is considered to be a “Primary Claimant” under the Plan). However, where the only claim to the Settlement Fund being applied for with respect to a deceased Injured Person are Part A compensation shares and no claims are made for compensation under Parts B or C, the claim may be submitted by the Injured Person’s surviving spouse if any, or if none, by an Injured Person’s surviving child with the written consent of all other surviving children, if any.

Where there are one or more Settlement Class Members associated with a Primary Claimant as a Derivative Claimant, that is, the Settlement Class Member’s claim in the Underlying Lawsuit was based upon the Primary Claimant’s asbestos injury and not theirs, then

the Primary Claimant (or in the limited circumstances where a Derivative Claimant is making only the Part A Claim) will also be eligible to receive one additional Part A payment of up to \$500, for a total Part A award of up to \$1,000.

Part A Base Payments are subject to proration downward if more than 12,500 Part A Base payments are awarded, counting each Primary and Derivative Claimant Base Payment award separately. Any funds in the Part A sub-fund remaining after payment of all eligible Part A share claims will be reallocated by the Settlement Trustee first to Part C to pay allowed EIF claims, if any, or otherwise to Part B. (Such reallocation being referred to as a “spillover”).

2. Payments under the Plan’s Part B program.

The Plan’s Part B program provides additional compensation to the Injured Persons in the Underlying Lawsuits (or their estates if deceased) out of an initial sub-fund allocation from the Settlement Fund of \$59.75 million. The Part B sub-fund will be distributed in its entirety among the Part B Claimants adjudicated during the claims process to be eligible to share in Part B distributions. The amount of the Part B sub-fund may change during the course of the Settlement Fund’s administration based on the Settlement Trustee’s application of a spillover of unused allocations of the Part A or Part C programs’ sub-funds, accrued interest earned on the Settlement Fund’s assets, payment of Class Representative service awards, or the need to pay administration costs and expenses that cannot be paid or fully paid from the Settlement Cost Fund. The amount a Primary Claimant will receive depends upon the nature of the disease allegedly sustained from exposure to Emtal Talc and the number of other persons who make Part B claims and the nature of their diseases.

Part B compensation claims may be submitted only by Primary Claimants, including the Injured Person in the Underlying Lawsuit or by the Injured Person’s estate if such person is deceased. Class Members who apply and meet the eligibility requirements for a Plan B program award will receive a proportionate share of the Part B sub-fund based upon a system of points awarded for the asbestos disease the Injured Person sustained and was diagnosed.

Eligibility for Part B compensation requires a Primary Claimant establish (a) entitlement to Part A compensation; and (b) through credible, competent proof that the Injured Person sustained an asbestos-related injury falling into one of four defined categories of asbestos disease levels: (1) Non-malignant asbestos pulmonary disease (a “**Part B Level 1 claim**”); (2) Malignant Asbestos Disease Other Than Mesothelioma or Level 3 Claim Lung Cancer (a “**Part B Level 2 claim**”); (3) either: (i) Primary Lung Cancer with evidence of underlying Bilateral Asbestos-Related Nonmalignant Disease; or (ii) Severe Asbestosis (a “**Part B Level 3 claim**”); or (4) Mesothelioma (a “**Part B Level 4 claim**”). A Part B claim may be based on the highest degree of the Injured Person’s disease progression provable as of the time of the claim submission to the Plan. Claimants may establish proof of medical injury through a certification of a prior equivalent asbestos disease level adjudication by one of several designated Qualified Asbestos Trusts or through individual adjudication of satisfactory medical evidence provided by the Claimant to the Administrator. Please review the Plan of Distribution for details as this Notice is only a summary of the Plan’s Distribution Procedures.

The Part B sub-fund will be allocated among and paid to those Part B Claimants adjudicated to be eligible according to the disease level sustained using an assigned number of “Qualifying Claim Points” based on whether they have a Part B Level 1, 2, 3 or 4 disease. Part B sub-fund compensation will be the claimant’s *pro rata* share of the Part B sub-fund calculated according to the formula $X/Y \times Z$, where *X* represents the number of the individual eligible Claimant’s adjudicated Qualifying Claim Points; *Y* represents the aggregate of all eligible Claimants’ adjudicated Qualifying Claim Points, and *Z* represents the Part B sub-fund dollar amount (including any spillovers from Part A or Part C sub-funds). The number of Qualifying Claim Points for each Part B claim level is set forth in the following Table 1. The number of Qualifying Claim Points assigned to each asbestos disease category in Table 1 is based upon a survey and analysis conducted by Verus LLC of compensation programs employed by eighteen relatively comparable bankruptcy asbestos trust claims facilities to allocate their asbestos claim trust funds among claimants suffering from different levels of asbestos disease.

Precise amounts of compensation for each Part B Claim Level cannot be determined presently because a number of key factors are not yet known, including the number and disease level distribution of Part B claims, whether there will be spillover from Parts A and C, and other variables in the Plan of Distribution. Table 1 below, however, provides a range of hypothetical Part B payment estimates based on (a) receipt and approval by the Settlement Fund of 7,500, 8,000 and 8,500 Part B claims; and (b) an asbestos disease distribution rate equal to the historical asbestos disease rates experienced by the Johns Manville Asbestos Trust (which rates are stated for each disease level in the table).

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Table 1				
Hypothetical Part B Payment Share Estimates*				
Part B Claim Levels	Qualifying Claim Points	Estimated Payments (Estimated number of claims)		
	<small>(Assumed disease rate %)</small>	7,500 approved claimants	8,000 approved claimants	8,500 approved claimants
Level 1 Claim Non-Malignant Asbestos disease other than Severe Asbestosis. (Bilateral Asbestos-Related Nonmalignant Disease Injuries other than Severe Asbestosis)	1 (86.3 %)	\$1,283 (6,473)	\$1,203 (6,904)	\$1,132 (7,336)
Level 2 Claim Malignant Asbestos Disease Other Than Mesothelioma or Level 3 Claim Lung Cancer.	9 (2.1 %)	\$11,546 (158)	\$10,824 (168)	\$10,188 (179)
Level 3 Claim Either: (a) Primary lung cancer with evidence of underlying Bilateral Asbestos-Related Nonmalignant Disease; or (b) Severe Asbestosis.	20 (7.3 %)	\$25,658 (548)	\$24,054 (584)	\$22,639 (621)
Level 4 Claim Mesothelioma	86 (4.3 %)	\$110,327 (323)	\$103,432 (344)	\$97,348 (366)
* Due to rounding, the numbers presented may not add up precisely to the totals indicated and payment estimates may not precisely reflect the absolute figures.				

Caveats:

Table 1 is for illustration purposes only. The actual Part B payment amounts to Settlement Class Members will likely be different than any of the estimated hypothetical payments appearing in the table based upon the Settlement Fund's actual claim experience.

The hypothetical payment share estimates shown on Table 1 do not reflect deductions for any liens or fees charged by personal attorneys hired by class members described in Question 12(3)(C) (liens) and Question 23 (individually retained attorney's fees) below. As described in those Questions, class members eligible for a settlement payment are responsible for paying from that settlement payment any liens or any fees charged by personal attorneys should they hire one.

3. Payments under the Plan's Part C Discretionary EIF program.

The Plan's Part C EIF program allocates \$6.5 million of the Settlement Fund for an Extraordinary Injury Fund under which the Settlement Trustee has discretionary authority to award bounded supplemental compensation payments to a Primary Claimant with mesothelioma who establishes to the Settlement Trustee's satisfaction that the Primary Claimant sustained an extraordinary physical injury and/or economic loss allegedly as a result of exposure to Emtal Talc mined, milled, sold or distributed by Engelhard/BASF that is materially and substantially beyond that sustained by typical other Part B mesothelioma Primary Claimants.

To qualify for an EIF award, a Primary Claimant, in addition to establishing Class Membership under Part A and Part B, must satisfy specific eligibility requirements that: (1) the subject Injured Person developed mesothelioma; (2) the Primary Claimant has not received appropriate and sufficient compensation for the subject mesothelioma injury; (3) the subject mesothelioma injury and resulting losses were allegedly a result of frequent, regular and proximate exposure to Emtal Talc; and (4) the Underlying Lawsuit's plaintiff lawyer or firm received direct representations from an Engelhard/BASF attorney regarding the absence of asbestos in Emtal Talc. No Part C award made pursuant to the discretionary EIF program may exceed \$175,000. The Part C EIF sub-fund may be increased by unallocated or unclaimed fund spillovers from the Part A fund. The Settlement Trustee is not required to make any EIF awards or to make awards sufficient to exhaust the EIF fund. The Settlement Trustee shall re-allocate the unused portion of the Part C sub-fund to the Part B sub-fund.

C. Are there any individual filing fees, case fees, administration charges or liens that could reduce my specific individual claim awards?

- There is no filing fee or charge to submit a claim to the Settlement Fund for compensation.
- Any and all liens relating to a claimant's settlement distribution are the sole responsibility of the claimant. The Plan of Distribution requires that certain liens imposed by a government entity, such as those relating to Social Security Medicare payments, be determined, resolved and, where existing, fully paid (or payment secured through deductions or withholdings from the claim proceeds by the Administrator) prior to the Administrator paying the claimant's claim. The Settlement Trustee as part of its administration will retain a lien resolution company (Lien Administrator) who, as a settlement benefit, will assist each Settling Class Members claimant in determining the existence of a Government Lien and the amounts to clear and resolve the lien. Government Lien resolution services assigned to the Lien Administrator under the Settlement shall be at the expense of the Settlement administration.
- The Lien Administrator may also assist claimants as to other medical or other benefit lien resolution with the claimant to pay the reasonable cost of such additional services out of his monetary award. Payment of such lien amounts, are the claimant's sole responsibility, will not be paid by the Settlement Fund, and may reduce the amount of the claimant's monetary award.

- Any attorneys' fees due to claimant's or claimant's decedent's attorneys in the Underlying Lawsuits with respect to monetary award distributions from the settlement are the sole responsibility of the claimant. While liens against a claimant's monetary award may also include a claim for attorneys' fees by the lawyers or law firms that had represented the claimant or the claimant's decedent in the Underlying Lawsuit, the determination and resolution of this lien is the individual Settlement Class Member claimant's sole responsibility. This will not be the responsibility of the Lien Administrator to negotiate or resolve and will not be paid or satisfied by the Settlement Fund.

13. What am I surrendering by staying in the Settlement Class?

Unless you exclude yourself (opt out) from the Settlement (see Question 19), you cannot sue BASF, Cahill, any of the other named Defendants in the *Williams* Action, or any party that is a Released Party as defined in the Settlement Agreement, which includes related individuals and entities to BASF, Cahill and the other named defendants, or be part of any other lawsuit against these persons and companies, about the issues and factual matters alleged in this case. This means you give up your right to continue to litigate any claims related to this Settlement, or file new claims, in any court or in any proceeding at any time. If you stay in the Class and presently have a non-malignant asbestos-related injury (such as asbestosis or pleural disease), you cannot in the future sue any of these released persons and companies for compensation or damages should you later develop a malignant asbestos-related injury such as cancer or mesothelioma, even if the law of your jurisdiction permits such claims.

The Settlement does not release or end any claims a Settlement Class Member may have now or in the future against Johnson and Johnson or any other talc company relating to talc or asbestos personal injuries. They are not parties to this Settlement nor are they Released Parties as that term is defined in the Settlement Agreement and claims against them are expressly not released by this Settlement.

Section 12 of the Settlement Agreement contains the complete text and details of what Settlement Class Members give up unless they exclude themselves (opt out) from the Settlement, including who and what are included as Released Parties, so please read it carefully. The Settlement Agreement is available at www.emtaltalcsettlement.com. The Settlement Agreement is also on file with the Clerk of the Court for the District of New Jersey (see Question 28 for the address). You can also get this information by calling 1-888-401-1929. If you have any questions you can talk to the law firms listed in the chart at the end of this Notice for free or you can talk to your own lawyer if you have questions about what this means.

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

14. What must be done to get a monetary payment from the Settlement Fund?

To be eligible to receive a payment from the Settlement Fund, you must complete and submit a valid and timely Claim Submission to commence a claim. If you do not submit a valid Claim Submission Form by the deadline of January 15, 2021, you will not receive a payment. All proofs and forms must be submitted by this deadline.

15. How can I submit a claim to get a monetary payment?

You can complete and submit your Claim Submission Form online at the Settlement Website, www.EmtalTalcSettlement.com. The Claim Submission Forms along with related certification and authorization forms, can be downloaded from the Settlement Website and submitted via mail, as well. You can request the Claim Submission certification form and authorization forms be sent to you by sending a written request to the Administrator by mail or by email or calling the Administrator to request these forms. A registered personal lawyer authorized by you to represent you and your family may complete and file the claim. There are, however, required verification forms and possible authorization forms that will be required to be signed by hand or electronically on the Settlement Website claims portal.

Please read the claim instructions carefully, and fully fill out the Claim Form. If you are submitting the Claim Submission Form in paper format, please mail it postmarked no later than 11:59 P.M. January 15, 2021 to: Emtal Talc Settlement c/o Verus LLC, Administrator, 3967 Princeton Pike, Princeton, NJ 08540. If you are submitting your Claim Submission Form online at the Settlement Website's claim portal, www.EmtalTalcSettlement.com, you must complete and submit the electronic claims by 11:59 P.M. (Eastern Standard Time), January 15, 2021.

All claimants must provide a copy of a pleading, an interrogatory answer, or a deposition testimony excerpt describing the Injured Person's alleged exposure to Emtal Talc unless no supporting document exists or can be found after Claimant has conducted a reasonable search and inquiry, in which case a certification under oath of diligent search must be provided instead. Claimants wanting to receive compensation under the Plan's Part B and/or Part C programs will also be required to submit documents or other acceptable forms of proof described in the Plan to establish (1) the existence and level of an eligible asbestos disease and, (2) the Injured Person's Underlying Lawsuit (or that brought by an Injured Person's estate where applicable) must have asserted a good faith, credible asbestos injury claim based on an injury believed to be caused by exposure to Emtal Talc. Please follow all the instructions on the claim form relating to that claim. You may be asked for additional documentation and certifications. Claims are subject to audits and you may be asked to provide additional documentation and certifications related to the audit.

16. Is there a time limit to file claims for monetary awards or to complete Claim Submissions?

Yes. The Court has set a deadline date to file a claim of January 15, 2021. If you do not submit a valid Claim Submission (which includes a completed claim form and necessary supporting documents) by both this date and one of the times listed below, you will not receive a payment:

- (1) If submitted by mail, express mail or hand delivery, the Claims Submission must actually be received by the Administrator in its offices by no later than 5 P.M., prevailing Eastern time in effect; or
- (2) If submitted electronically submitted through the Settlement Fund's website or other electronic portal established by the Administrator, the Claims Submission

must actually be received by the Administrator's system by no later than 11:59 P.M., prevailing Eastern time in effect.

17. When would I get my payment if eligible?

The Administrator intends to complete its adjudication of claims before the Court grants “final approval” of the Settlement. Payment, however, will not be made until after the Court grants “final approval” of the Settlement and after any appeals are resolved. All Claims must be adjudicated and any disputes or challenges regarding a claim determination resolved in accordance with the dispute and contest procedures in the Plan of Distribution. Required lien resolutions must also be completed before an individual claimant’s funds can be distributed. This may take a substantial amount of time to accomplish. Additionally, if the Court approves the Settlement after a hearing on July 29, 2021, there may be appeals. This will delay payment awards. It is always uncertain whether these appeals can be resolved and resolving them can take time. Everyone who submits a Claim Submission Form will be kept informed of the progress of the Settlement through the Settlement website or other means as appropriate. Please be patient.

18. Can I challenge or dispute the Administrator’s determination of my monetary award claim?

Yes. The Settlement’s Plan of Distribution procedures establishes a process for a Settlement Class Member to challenge or dispute the denial of a monetary award claim or the amount of the monetary award to the Settlement Trustee who will adjudicate the dispute.

19. How do I get out, or exclude myself (opt out) of the Settlement?

If you don’t want a payment from the Settlement, but you want to keep the right to sue or continue to sue BASF, Cahill or any of the other defendants in the *Williams* Action on your own about the legal and factual issues and claims in this case, then you must take steps to get out. This is called excluding yourself—or is sometimes referred to as opting out of the Settlement Class.

On or before December 16, 2020, you must mail a letter or other written document to the Administrator (Verus LLC) requesting exclusion from the Settlement Class. Your request must include:

- Your name, address, telephone number, Social Security or Tax Identifier Number and date of birth;
- A copy of your driver’s license, other government issued identification and if applicable to a deceased or incompetent person, documentation establishing authority to act such estate letters or power of attorney;
- A statement that “I wish to exclude myself from the Settlement Class in Williams v BASF Catalysts LLC, C.A. No. 2:11-cv-01754” (or substantially similar clear and unambiguous language); and
- Your signature by hand, and the date on which you signed it (even if represented by an attorney at law).

You must mail your exclusion (opt out) request, postmarked on or before December 16, 2020, addressed to:

Emtal Talc Settlement
c/o Verus LLC
3967 Princeton Pike
Princeton, NJ 08540

A husband and wife or entire family of heirs where applicable, can opt-out on one form provided all sign the form and provide the information and documents set out above.

Your request to exclude yourself (opt out) is not effective unless and until the District Court grants Final Approval and the order approving the Settlement becomes Final.

You can't exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) BASF, Cahill and the other defendants named in the *Williams* Action in the future.

20. If I do not exclude myself (opt out), can I sue BASF, Cahill and the other released Parties for the same thing later?

No. Unless you exclude yourself, you give up any right to sue BASF, Cahill or any other Released Person as defined in the Settlement Agreement for the claims that this Settlement resolves. If you have a pending asbestos lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Settlement Class to pursue or continue your own lawsuit against BASF, Cahill, the other Defendants in the *Williams* Action or any other Released Person concerning the labeling, marketing, composition, or advertising of Emtal Talc or the defense or resolution of asbestos injury claims relating to Emtal Talc. If you properly exclude yourself from the Settlement Class, you shall not be bound by any orders or judgments entered in the *Williams* Action relating to the Settlement. Remember, the exclusion (opt-out) deadline is **December 16, 2020**.

21. If I exclude myself, can I still get a payment?

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not complete on-line or send in a Claim Submission Form asking for benefits. You may, however, sue, continue to sue, or be part of a different lawsuit against BASF, Cahill or the other Released Parties in the Settlement.

THE LAWYERS REPRESENTING YOU

22. Do I have a lawyer in this case?

Yes. "Class Counsel" are listed below, represent all of the common interests of the Class Members. They are the lawyers who filed and prosecuted the lawsuit and negotiated the

Settlement. You will not be charged any fee for the services provided by these lawyers. See Question 23 below.

Christopher M. Placitella
Michael Coren
Jared M. Placitella
Eric S. Pasternack
Cohen Placitella & Roth, P.C.
127 Maple Ave
Red Bank, NJ 07701
cplacitella@cprlaw.com
mcoren@cprlaw.com
jmplacitella@cprlaw.com
epasternack@cprlaw.com.

Stewart L. Cohen
Harry M. Roth
Robert L. Pratter
Cohen Placitella & Roth, P.C.
2001 Market Street
Philadelphia, PA 19103
scohen@cprlaw.com
hroth@cprlaw.com
rpratter@cprlaw.com.

To be clear, however, Class Counsel listed above, **are not** responsible for and will not represent you in your individual claim to the Settlement Fund for monetary payments.

You are not obligated to hire your own lawyer. However, if you want to be represented by your own lawyer, you may hire one at your own expense. See Question 23 below.

23. How will the lawyers be paid?

There are three groups of lawyers who may seek compensation.

The first is Class Counsel. Class counsel will ask the Court for an award of attorneys' fees and reasonable costs. BASF and Cahill have agreed not to oppose or object to the request for attorneys' fees and reasonable incurred costs if the requests does not exceed \$22.5 million for attorneys' fees and \$1.2 million for cost reimbursement. These fees and incurred costs will be paid separately by the BASF and Cahill and not from the \$72.5 million Settlement Fund. Settlement Class Members will have an opportunity to comment on and/or object to this request at an appropriate time. Ultimately, the award of attorneys' fees and reasonable costs to be paid by BASF and Cahill is subject to the approval of the Court. BASF and Cahill will also separately pay the reasonable and necessary costs of administering the Settlement, including notice costs up to a limit of \$3.5 million. Class Counsel's fee, if approved, is 22.5% of the total amount paid by the Defendants to the Settlement Fund, Cost Fund and Attorneys' Fee Fund, all of which benefit the Class.

The second group ("Second Group") of lawyers are those who may be retained by you to represent you individually in this class action or submit your claim to the Claims Administrator. **YOU DO NOT NEED TO HIRE A LAWYER.** However, if you decide to do so, that lawyer will likely seek compensation for his or her services.

The third group of lawyers ("Third Group") are those who may claim an entitlement to a fee based upon agreements entered with Class Members or their decedents in the Underlying Lawsuits.

The fees, if any, for the Second and Third Group of lawyers are separate and distinct from the fees that will be paid to Class Counsel. The Second and Third Group of lawyers are also referred to as Non-Class Counsel. Typically, these fees are paid on a percentage of the recovery basis.

A fee paid to the Second or Third Group of lawyers referenced above would be the sole responsibility of the Class Member. By way of example only, should an attorney charge a class member a 33.3% contingency fee, and the class member is eligible for a Part A payment of \$500 and a Level 2 Part B Claim payment of \$10,824 as provided in Table 1 above (this example assumes there are 8,000 approved claims) for a total amount of \$11,324, the net recovery to the class member after payment of personal attorneys' fees would be \$7,550 (\$11,324 – \$3,774). The net recovery for the Class member in this example would vary depending on the fee percentage the attorney would charge and whether the Class Member is obligated to pay any liens (See Question 12 (3)(C)). This example is for illustrative purposes only; the Court has not made any determination regarding fees charged by non-Class Counsel. And, as noted below, the Court will decide any fee to be awarded to the Second and Third Group of lawyers.

In recent years, courts in class action cases have considered the extent to which fees may be charged by non-Class Counsel. The Court in this case has retained jurisdiction to consider and will make a determination about the fees and the amounts which may be charged to Class Members by non-Class Counsel, individual counsel and former counsel.

24. Are the class representatives being paid any compensation for their services?

Class Counsel will ask the Court to award each of the six named Plaintiffs \$50,000 each for or their class representative service in view of their efforts in bringing the *Williams* Action and helping the lawyers on behalf of the whole Class over the nine years of hard-fought litigation leading to the Settlement. The awards will be paid from the Settlement Fund as provided in the Plan of Distribution. The award of class representative service awards is subject to the approval of the Court. Settlement Class Members will have an opportunity to comment on and/or object to this request at an appropriate time.

OBJECTING TO THE SETTLEMENT

If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Williams v. BASF Catalysts LLC*. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to the addresses listed below. Objections must be postmarked no later than **December 16, 2020**:

Office of the Clerk
U.S. District Court, District of New Jersey
MLK Building & U.S. Courthouse
50 Walnut Street, Room 4015

Newark, NJ 07102

Michael Coren, Esq.
Cohen, Placitella & Roth, P.C.
2001 Market Street, Suite 2900
Philadelphia, PA 19103

Peter Farrell, Esq.
Kirkland & Ellis LLP
1301 Pennsylvania Ave. N.W.
Washington, DC 20004

Nina Gussack, Esq.
Troutman Pepper Hamilton
Sanders LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103

25. What's the difference between objecting to the Settlement and excluding yourself from the Settlement?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

26. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 10:00 A.M. on July 29, 2021, at the United States District Court for the District of New Jersey, 50 Walnut Street, Newark, N.J., in Courtroom MLK 2D. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Magistrate Judge Dickson will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel and determine the Class Representatives application for Service Fee awards. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

27. Do I need to come to the hearing?

No. Class Counsel will answer questions Judge Dickson may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

28. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Williams v. BASF Catalysts LLC*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses listed below. You cannot speak at the hearing if you excluded yourself. A date for any objectors to give notice that they desire to speak at the hearing will be posted on the website.

Office of the Clerk
U.S. District Court, District of New Jersey
MLK Building & U.S. Courthouse
50 Walnut Street, Room 4015
Newark, NJ 07102

Michael Coren, Esq.
Cohen, Placitella & Roth, P.C.
2001 Market Street, Suite 2900
Philadelphia, PA 19103

Peter Farrell, Esq.
Kirkland & Ellis LLP
1301 Pennsylvania Ave. N.W.
Washington, DC 20004

Nina Gussack, Esq.
Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103

IF YOU DO NOTHING

If you do nothing and do not file a claim, you will be deemed a Settlement Class Member, but you'll get no money from this Settlement. If you are a Settlement Class Member and do not exclude yourself, then you won't be able to start a lawsuit against the Defendants (BASF and Cahill) for asbestos injuries ever again.

GETTING MORE INFORMATION**29. Are there more details about this Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by writing to Michael Coren, Esq., Cohen, Placitella & Roth, P.C., Philadelphia, PA 19103, or by visiting www.EmtalTalcSettlement.com.

30. How do I get more information?

You can call 1-888-401-1929 toll free; write to Emtal Talc Settlement, c/o Verus LLC, 3967 Princeton Pike, Princeton, NJ 08540; or visit the website at www.EmtalTalcSettlement.com, where you will find answers to common questions about the settlement, a claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

IMPORTANT DATES & CONTACT INFORMATION			
EXCLUSION (OPT OUT DEADLINE)	December 16, 2020		
OBJECTION DEADLINE	December 16, 2020		
DEADLINE TO REQUEST TO SPEAK AT THE FAIRNESS HEARING	This date will later be posted on the website.		
START OF THE CLAIMS PERIOD	September 17, 2020		
DEADLINE TO SUBMIT A CLAIM	January 15, 2021		
CLAIMS ADMINISTRATOR	Emtal Talc Settlement c/o Verus LLC 3967 Princeton Pike Princeton, NJ 08540		
COURT	Clerk of the District Court U.S. District Court for the District of New Jersey MLK Building & U.S. Courthouse 50 Walnut Street Newark, NJ 07102		
CLASS COUNSEL	<table border="0"> <tr> <td>Christopher M. Placitella Michael Coren Jared M. Placitella Eric S. Pasternack Cohen Placitella & Roth, P.C. 127 Maple Ave Red Bank, NJ 07701</td> <td>Harry M. Roth Robert L. Pratter Cohen Placitella & Roth, P.C. 2001 Market Street Suite 2900 Philadelphia, PA 19103</td> </tr> </table>	Christopher M. Placitella Michael Coren Jared M. Placitella Eric S. Pasternack Cohen Placitella & Roth, P.C. 127 Maple Ave Red Bank, NJ 07701	Harry M. Roth Robert L. Pratter Cohen Placitella & Roth, P.C. 2001 Market Street Suite 2900 Philadelphia, PA 19103
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**QUESTIONS? CALL 1-888-401-1929 TOLL FREE, OR VISIT
WWW.EMTALTALCSETTLEMENT.COM**

Exhibit 5

Letter to Underlying Attorneys

Dear Counsel,

BrownGreer has been appointed by the United States District Court for the District of New Jersey to serve as the Class Action Notice Agent in the captioned above class action matter (the “*Williams Action*”) There is a class action settlement pending in the *Williams Action* and the attached long form notice explains the case, the settlement and relevant deadlines.

Based on underlying litigation records provided to Verus, LLC, the Court-appointed Claims Administrator, we believe that you, your firm or predecessors to your current law practice either currently represent or previously represented clients who may be members of the *Williams Action* class. Since the settlement may afford these clients the opportunity to receive monetary compensation and otherwise affect their rights the Court has ordered that we send you this letter and the long-form notice and request you to notify your living clients who are class members or their heirs/personal representative if deceased about the settlement.

To assist you, we have enclosed a list prepared by the Claims Administrator of potential Class Members associated with you or whom we believe is a predecessor to your current law practice. To assist Class Members, we ask that you (1) provide us with any known corrections to the list and provide the names and addresses of other clients (or personal representatives or next of kin of clients who are deceased) that are not on the list who may be Class Members for purposes of

further disseminating class notice, and (2) inform your clients who may be potential Class Members of the pendency of the Class and the proposed settlement and that they may obtain information concerning the proposed settlement from the Claims Administrator and how to do so, all of which is explained in the attached long form notice.

If you prefer to send copies of the long form notice under your own cover letter, we will provide you with enough copies of the notice on request. We will also reimburse you for the cost of U.S. mail postage incurred if you agree to provide us the names and addresses of the persons you sent copies of the notice and the date of mailing.

If you have any questions, please feel free to contact the undersigned, or Verus at (609)466-0427, ext. 1069., or Class Counsel, Christopher M. Placitella, Harry M. Roth or Michael Coren, Cohen Placitella and Roth, P.C. at 888-375-7600.

Thank you for your anticipated cooperation in this effort.

BrownGreer, PLC
Class Action Notice Agent

Exhibit 6

Summary Notice

40 Q&A

'DOONESBURY' AT 50
GARRY TRUDEAU ON HIS
ICONIC CHARACTERS



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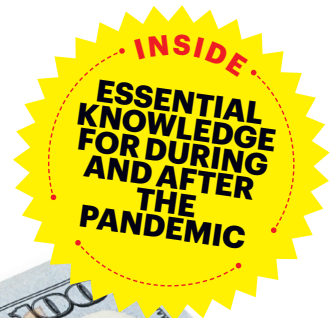
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HOW I SCAM YOU
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AARP Bulletin

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RESET YOUR FINANCES



A DO-IT-NOW GUIDE TO:

- > ASSESS YOUR MONEY HEALTH
- > MANAGE YOUR SPENDING
- > UPGRADE YOUR RETIREMENT PLAN
- > SECURE YOUR FUTURE

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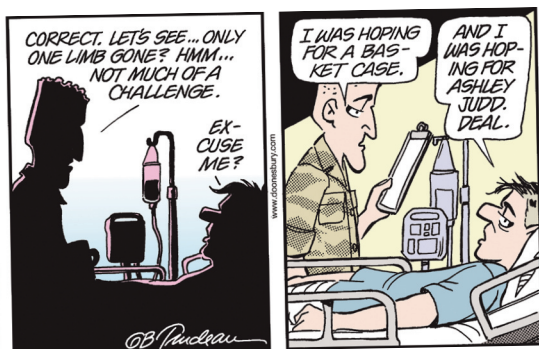


ALSO
WHEN TO SHARE
YOUR WEALTH WITH KIDS
BY JEAN CHATZKY
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PLUS
ALL ABOUT YOU
AARP RESEARCH
LEADS THE WAY
IN UNDERSTANDING
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within the cohort to make broad generalizations, at least from my vantage point.

This month you release a package called *DBury@50*, which will contain all 50 years of the strip. Who influenced you the most?

Jules Feiffer, whom I discovered first as a playwright, only later as a cartoonist. His was the first strip I ever saw that was about ideas, not punch lines. Robert Altman also had a profound effect on me. Especially his insight that people don't really listen carefully to one another. In real life, most conversation collides, overlaps and trails off, with none of the clean back-and-forth of scripted dialogue. And none of the jokes. Altman understood that the richest humor comes from people just being themselves.

Do you believe this is the golden age of political satire?

I do. Late-night comedy is flourishing, as is a new crop of online performers. The times haven't been as good for my own art form. Neither the comics nor editorial cartooning are anywhere near as impactful as they once were, but we're all still in the good fight.

Do you ever get cartoonist's block?

All the time. Back when my syndicated work appeared in uninterrupted daily increments, people would ask me what I did when I ran out of ideas. I always thanked them for not noticing. Failure to send in something was never an option.

What kind of jokes work better with millennials than with boomers?

I haven't a clue. I couldn't write a joke if my life depended on it. I write character comedy, specific to the individual.

What series of strips are you most proud of?

As a broad category, the strips on the military. The tragic stuff is the most challenging to write because of the concurrent obligation

to keep it entertaining.



Cover illustration created exclusively for AARP by Garry Trudeau

Over the years, your portrayal of war has become more nuanced. How did that happen?

When I started out, I was a college student, and my first take on the Vietnam War was a hippie fantasy about a Vietcong fighter and a GI grunt learning what they had in common. My stories couldn't have been less grounded in reality, and yet the strip ran in *Stars and Stripes*, which signaled to the troops that at least someone was thinking about them. That earned me enough goodwill that, later, an Army colonel who'd served in Vietnam asked me to embed with his troops in Kuwait following Operation Desert Storm. The relationships I formed there proved invaluable when the U.S. invaded Iraq in 2003. After [my character] B.D. lost his leg in Fallujah, the Department of Defense invited me to talk to amputees at Walter Reed [National Military Medical Center]. I strongly opposed the war itself. Fortunately, the military seemed mostly unfazed by that. I even found myself signing books inside the Pentagon. The last time I'd been there was to protest the Vietnam War.

If you were a "Doonesbury" character, how would you portray yourself?

As a left-of-center moderate with a steady job, a stable family and a normal nose. I'd be the most boring character in the entire strip and I'd be cut within a few weeks.

Has the strip gotten easier as you've aged?

As hard as it's ever been. There's nothing I'd rather be doing, but it's still work. And I never think about it when I'm not doing it.

Any thought about when the strip will end?

To be honest, I've been so preoccupied with my 50th year in the business that I haven't given any thought to my 51st. We'll just have to see. The continuing collapse of the newspaper industry may make the decision for me.

What is the legacy of "Doonesbury"?

I'm not sure it's healthy for anyone to dwell on legacy. There's no danger of my writing a memoir. But I will say that I have made comics safe for bad drawing. Without "Doonesbury," there's no "Cathy," "Bloom County" or "Dilbert." Nobody's ever thanked me for lowering the bar and democratizing comics, but it may be my greatest contribution. ■

Interview by Hugh Delehanty

Industrial Talc Asbestos Settlement

If you or a close relative ever filed an asbestos lawsuit based on exposure to Emtal Talc, used in the manufacturing of industrial products, you could receive a payment from a proposed \$72.5 million class action settlement.

What Is This About? A settlement has been reached in a case called Williams v. BASF Catalysts LLC, No. 2:11-cv-01754 (D.N.J.) ("Williams Lawsuit") regarding (a) claimed exposure to Emtal Talc (a brand of industrial talc) that allegedly caused asbestos bodily injury and (b) related lawsuits that were filed ("Underlying Lawsuits") against BASF Catalysts, LLC and others (together, "Underlying Defendants") and dismissed. Cahill Gordon & Reindel LLP ("Cahill") represented the Underlying Defendants in the Underlying Lawsuits. The Williams Lawsuit alleges that the Underlying Defendants and Cahill (together, "Williams Defendants") made misstatements or concealed evidence about the existence of alleged asbestos in Emtal Talc and failed to disclose related information before the dismissal of the Underlying Lawsuits. The Williams Defendants deny these allegations. They have also agreed to pay attorneys' fees up to \$22.5 million, and the attorneys' motion for fees will be posted on the website after it is filed.

Am I Affected? You may be a "Class Member" to the Settlement if, between March 8, 1984, and March 29, 2011, you filed and served an Underlying Lawsuit against an Underlying Defendant arising from your or another person's exposure to Emtal Talc, and before March 30, 2011, you either (a) voluntarily dismissed or terminated the Underlying Lawsuit; or (b) had your Underlying Lawsuit involuntarily dismissed by the court. If you are the personal representative of a Class Member, this Settlement may also affect you.

What Are My Options?

- 1. File a Claim** - Submit a claim by **January 15, 2021** to receive payment. You can submit a claim at www.EmtalTalcSettlement.com or by mail.
- 2. Exclude Yourself** - If you are a Class Member but do not want to be included in the Settlement, you must exclude yourself by **December 16, 2020**. You will get no payment, but you will keep your right to sue the Williams Defendants about the claims in this case. The long-form notice available on the settlement website explains how to exclude yourself.
- 3. Object** - If you remain in the Settlement but do not like it, you can mail a written objection to the Court by **December 16, 2020**. The long-form notice available on the settlement website explains how to object.
- 4. Go to a Hearing** - If you remain in the Settlement but want to speak in Court about the fairness of the Settlement, you can appear at a hearing at 10:00 a.m. on July 29, 2021 and ask the Court for permission to speak at that hearing. You can appear on your own behalf or through an attorney, but you do not have to.
- 5. Do Nothing** - If you do nothing, you will remain in the Settlement but will not receive a payment and will give up your rights to sue the Williams Defendants about the claims in this case.

This is only a summary. For detailed information, visit the website or call the number below.

**www.EmtalTalcSettlement.com
1-888-401-1929**

Herald-Star



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www.heraldstaronline.com

Vol. 215 No. 130

WEDNESDAY, NOVEMBER 4, 2020

\$1.00

Maple: Voters say we're on right path

By **ANDREW GRIMM**
Staff writer

STUEBENVILLE — Voters in Jefferson County decided to give Commissioner Dave Maple another four years on Tuesday night.

"Obviously, we're very happy with the results," he said. "We're ready to get moving. We have a lot of work in front of us with the budget for next year, the challenges with COVID. We're really appreciative of the support we got."

Maple, the Republican incumbent, decisively fended off a challenge from Democrat Bob Smith, with preliminary results showing him winning 65.8 percent of the 30,862 votes cast in the race to Smith's 34.2 percent.

Those results will be certified after the 10 day period for military ballots to come in and for official canvassing.

"The result is a good indicator folks in the county think we're doing the right things, and sup-



Maple

port is there going forward for us to continue to do the right things," Maple said.

Maple, who has held the office since 2004, said the message from the voters was one of reassurance. His campaign focused on the accomplishments during his more than 15 years in office, such as a lowering the unemployment rate, development at the Jefferson County Industrial Park and the recent formation of the Airport

Zoning Board to protect the county airport.

"It's a sign to me that people think we're doing the right things and want us to keep the course," he said. "The successes we've had, we can build on. I'm very humbled with the support that we've been given and it really gives me encouragement to keep moving forward and that the county can keep moving forward with us."

"I want to congratulate all the candidates, including my opponent, Bob Smith."

The count continues

Trump wins Florida, locked in other tight races with Biden

Associated Press

WASHINGTON — President Donald Trump carried Florida, the nation's most prized battleground state, and he and Democrat Joe Biden were increasingly focused early Wednesday on the three Northern industrial states — Wisconsin, Michigan and Pennsylvania — that could prove crucial in determining who wins the White House.

Four years after Trump became the first Republican in a generation to capture that trio of states, they were again positioned to influence the direction of the presidential election. Trump kept several states, including Texas, Iowa and Ohio, where Biden had made a strong play in the final stages of the campaign.



Associated Press

DEMONSTRATION — A demonstrator holds up a sign while waiting for election results at Black Lives Matter Plaza on Tuesday in Washington.

See **CONTINUES** Page 5A →

Ferguson heads to Columbus

Republican tapped to replace Cera in 96th

By **LINDA HARRIS**
Staff writer



Ferguson

STUEBENVILLE — Republican Ron Ferguson figures it was "hard work and really getting out on the campaign trail, meeting people in their communities" that propelled him to victory in the three-way race for 96th District state representative.

Ferguson, 34, was the unofficial winner in Tuesday's general election, easily outdistancing Democratic rival Richard Olivito and Libertarian Oscar Herrera to claim the seat vacated by Rep. Jack Cera, D-Bellaire, who was unable to run for re-election due to term limits.

Ferguson said he traveled "the whole district" to engage voters.

"I spent many days in Belmont and Monroe counties," he said. "I made it a central part of my campaign to make sure the people of (those counties) knew they were going to get equal representation from me, those that voted for me and those that did not."

See **FERGUSON** Page 5A →

Morelli claims open county commission seat

By **ANDREW GRIMM**
Staff writer

STUEBENVILLE — Republican Tony Morelli will join the Jefferson County Board of Commissioners in January after coming out on top of a four-man-race for the seat long held by Commissioner Tom Gentile.

Morelli emerged victorious on Tuesday night, defeating Democrat Edward

Littlejohn and Independents Daniel Cermak and Patrick Murphy.

Some 31,927 votes were cast in the race, with Morelli, a local businessman, taking 16,914 — or 52.98 percent — of the county's vote total according to preliminary results. Littlejohn finished with 39.42 percent of the vote, while Cermak took 5.09 percent and Murphy 2.51 percent.

The results will be final-



Morelli

ized after the 10 day period for military ballots to be received and official canvassing.

Morelli ran his campaign focused on preventing new landfills in the county, improving

county residents struggling with addiction, expanding economic development with shovel-ready sites and expanding high-speed internet coverage in the county.

"I want to help the people of Jefferson County," Morelli told the Herald-Star prior to the election. "I think I'm in tune with what is going on in the county."

Morelli could not be reached for further comment late Tuesday.

Officials: Local turnout similar to 2016

By **ANDREW GRIMM**
Staff writer

STUEBENVILLE — In what was an unorthodox and unique 2020 election cycle, Jefferson County Board of Elections Chairman Matt Parise could not have been happier with the county's election staff following Tuesday night's count.

"We have an absolutely phenomenal staff, both full-time and part-time," Parise said. "Poll workers, extras and rovers, everybody came together and made sure the people of Jefferson County got to vote, whether they wanted to vote absentee, whether they wanted to vote in person early, or whether they wanted to go to the polls (Tuesday), they got that opportunity."

See **TURNOUT** Page 5A →



Andrew Grimm

REVIEWING RESULTS — Matt Parise, chairman of the Jefferson County Board of Elections, and Frank DiCarantonio, board member, review preliminary results in the board office during Tuesday's night's general election.

Plesich defeats Corrigan in clerk of courts contest

By **LINDA HARRIS**
Staff writer

STUEBENVILLE — For the first time in 20 years, Jefferson County will start the year without a Corrigan in the Clerk of Court office.

Republican newcomer Andrew Plesich easily outpaced his Democratic challenger, Darrin Corrigan, to claim victory.

Unofficially, Plesich scored 19,427 votes to 11,984 for Corrigan in the Jefferson

County race.

"I'm very excited," Plesich said. "I just want to give thanks and praise to the Lord. He surrounded me with so many great people to make this happen. It feels amazing for me and my family."

Plesich credits his win to a lot of hard work, "and I also think the 'red wave.' Those two factors made the difference."

See **PLESICH** Page 5A →

COVID-19 SIGNS AND SYMPTOMS

According to the federal Centers for Disease Control and Prevention, the reported illnesses have ranged from mild symptoms to severe illness and death for confirmed COVID-19 coronavirus cases. The following symptoms may appear two to 14 days after exposure:

- Fever
- Cough
- Shortness of breath

If you think you have been exposed to COVID-19 and develop a fever and symptoms, call your health care provider for medical advice.

CONFIRMED CASES

- Jefferson County: 573 (4 deaths)
- Harrison County: 99 (4 deaths)
- Hancock County: 217 (1 death)
- Brooke County: 223 (4 deaths)
- Ohio: 213,350 (5,049 deaths)
- West Virginia: 25,593 (469 deaths)

INSIDE TODAY



Seventh-annual Valley's Got Talent event set for Sunday.

Page 8A

SOUND OFF

Today's question is: **Were you surprised by any of the election results?**

Tuesday's question: **Should communities move forward with events like Christmas parades?**

Yes 56%
No 44%

Log onto heraldstaronline.com before 9 p.m. today to cast your vote.

INDEX

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Obituaries 3A
Opinion 4A
Police 8A
Sports 5-6B

Serving Steubenville and the Tri-State Area since 1806



Industrial Talc Asbestos Settlement

If you or a close relative ever filed an asbestos lawsuit based on exposure to Emtal Talc, used in the manufacturing of industrial products, you could receive a payment from a proposed \$72.5 million class action settlement.

What Is This About?

A settlement has been reached in a case called Williams v. BASF Catalysts LLC, No. 2:11-cv-01754 (D.N.J.) ("Williams Lawsuit") regarding (a) claimed exposure to Emtal Talc (a brand of industrial talc) that allegedly caused asbestos bodily injury and (b) related lawsuits that were filed ("Underlying Lawsuits") against BASF Catalysts, LLC and others (together, "Underlying Defendants") and dismissed. Cahill Gordon & Reindel LLP ("Cahill") represented the Underlying Defendants in the Underlying Lawsuits. The Williams Lawsuit alleges that the Underlying Defendants and Cahill (together, "Williams Defendants") made misstatements or concealed evidence about the existence of alleged asbestos in Emtal Talc and failed to disclose related information before the dismissal of the Underlying Lawsuits. The Williams Defendants deny these allegations. They have also agreed to pay attorneys' fees up to \$22.5 million, and the attorneys' motion for fees will be posted on the website after it is filed.

Am I Affected?

You may be a "Class Member" to the Settlement if, between March 8, 1984, and March 29, 2011, you filed and served an Underlying Lawsuit against an Underlying Defendant arising from your or another person's exposure to Emtal Talc, and before March 30, 2011, you either (a) voluntarily dismissed or terminated the Underlying Lawsuit; or (b) had your Underlying Lawsuit involuntary dismissed by the court. If you are the personal representative of a Class Member, this Settlement may also affect you.

What Are My Options?

- 1. File a Claim** - Submit a claim by **January 15, 2021** to receive payment. You can submit a claim at www.EmtalTalcSettlement.com or by mail.
- 2. Exclude Yourself** - If you are a Class Member but do not want to be included in the Settlement, you must exclude yourself by **December 16, 2020**. You will get no payment, but you will keep your right to sue the Williams Defendants about the claims in this case. The long-form notice available on the settlement website explains how to exclude yourself.
- 3. Object** - If you remain in the Settlement but do not like it, you can mail a written objection to the Court by **December 16, 2020**. The long-form notice available on the settlement website explains how to object.
- 4. Go to a Hearing** - If you remain in the Settlement but want to speak in Court about the fairness of the Settlement, you can appear at a hearing at 10:00 a.m. on July 29, 2021 and ask the Court for permission to speak at that hearing. You can appear on your own behalf or through an attorney, but you do not have to.
- 5. Do Nothing** - If you do nothing, you will remain in the Settlement but will not receive a payment and will give up your rights to sue the Williams Defendants about the claims in this case.

This is only a summary. For detailed information, visit the website or call the number below.

www.EmtalTalcSettlement.com
1-888-401-1929

Hurricane Eta slams Nicaragua

MANAGUA, Nicaragua (AP) — The heart of powerful Hurricane Eta moved ashore in Nicaragua Tuesday with devastating winds and rains that destroyed rooftops and caused rivers to overflow.

The hurricane had sustained winds of 110 mph, according to the U.S. National Hurricane Center, down from an overnight peak of 150 mph. Even before it made landfall as a Category 4 hurricane, Honduras reported the first death after a mudslide trapped a 12-year-old girl in San Pedro Sula.

Tuesday afternoon, the strong Category 2 hurricane crawled inland from the coast, about 25 miles southwest of coastal Puerto Cabezas or Bilwi, and it was moving west near 5 mph.

Landfall came hours after it had been expected. Eta's eye had hovered just offshore through the night and Tuesday morning. The unceasing winds uprooted trees and ripped roofs apart, scattering corrugated metal through the streets of Bilwi, the main coastal city in the region. The city's regional hospital abandoned its building, moving patients to a local technical school campus.

"It was an intense night for everyone in Bilwi, Waspam and the communities along the northern coast," Yamil Zapata, local Bilwi representative



COMING ASHORE — People arrive in a boat in Wawa, Nicaragua, Tuesday. Hurricane Eta slammed into Nicaragua's Caribbean coast with potentially devastating winds Tuesday.

of the ruling Sandinista Front, told local Channel 4 Tuesday.

Guillermo Gonzalez, director of the country's emergency management agency, said in a news conference earlier that there were reports of corrugated metal roofs flying off homes, trees, poles and power lines falling and rivers rising in the coastal area. So far, there were no reported injuries or deaths, he said.

About 10,000 people were in shelters in Bilwi and an equal number in smaller towns across the region, he said. The area

had already been lashed with strong winds and heavy rain for hours.

The storm has been drenching neighboring Honduras with rains since at least Sunday and the country reported its first death attributed to Eta early Tuesday.

A 12-year-old girl died in a mudslide in San Pedro Sula, the main population center in northern Honduras, said Marvin Aparicio, director of the national system of incident commands for Honduras' emergency management agency.

In Honduras, there

were at least 559 people affected by flooding who had to move to shelters or go to relatives' homes, he said. At least 25 people had been rescued, he said. His agency reported at least six rivers causing significant flooding.

Nicaragua's army moved red-helmeted troops specialized in search and rescue to Bilwi, the main coastal city in an otherwise remote and sparsely populated area.

At a shelter in Bilwi, farmer Pedro Down waited late Monday for Eta's arrival. "When it comes

Johnny Depp loses libel case against U.K. tabloid

LONDON (AP) — Johnny Depp lost his high-stakes libel case Monday against The Sun tabloid newspaper for labeling him a "wife beater," as a British judge said he believed the actor had abused ex-wife Amber Heard to such an extent that she frequently feared for her life.

In a decision widely cheered by campaigners against domestic abuse, Justice Andrew Nicol said the defendants proved during the trial in London that their allegations against Depp were "substantially true." Depp's lawyers said it would be "ridiculous" if the actor didn't appeal the decision.

Over the course of nearly three weeks this summer, Nicol heard lurid — and irreconcilable — accounts from Depp and Heard in which each accused the other of abuse.

"I have found that the great majority of alleged assaults of Ms. Heard by Mr. Depp have been proved to the civil standard," Nicol wrote in his ruling.

In arguably the biggest English libel trials of the 21st century, Depp sued News Group Newspapers, publisher of The Sun, and its executive editor, Dan Wootton, over an April 2018 article that accused him of assaulting fellow actor Heard.

The ruling deals a big blow to Depp's reputation that could imperil his career, which has seen the actor take the lead in some of the most popular family movies in recent times, from "Edward Scissorhands" to most lucratively the "Pirates of the Caribbean" franchise. That reputational cost clearly comes with an indeterminate financial cost on top of the several millions pounds in legal costs he will likely be required to pay following Monday's ruling.



LAWSUIT LOST — In this July 28 file photo, actor Johnny Depp arrives at the High Court in London during his case against News Group Newspapers over a story published about his former wife Amber Heard, which branded him a 'wife beater'. A judge ruled in favor of tabloid The Sun on Monday.

A lawyer for Depp, 57, described the decision as "perverse as it is bewildering."

"The judgment is so flawed that it would be ridiculous for Mr. Depp not to appeal this decision," Jenny Afia said in a statement.

An attorney for Heard, meanwhile, said the verdict was "not a surprise" for anyone who followed the trial.

Historically, Britain's libel laws have been seen as favoring public figures and for being tough on media outlets and publishers, so Depp's defeat may prompt anyone considering legal action to think again.

The Sun called the decision a "stunning victory for press freedom."

At the heart of the Sun's characterization of Depp as a "wife-beater" were allegations the actor as-

saulted Heard 14 times in locations around the world.

Heard, 34, said the abuse was largely fueled by Depp's heavy drug and alcohol use and that he could turn into "a self-created third party," which he referred to as "The Monster." She alleged that at various time between 2013 and 2016 he hit, slapped and shoved her, pulled her hair and threw bottles "like grenades" at her.

Nicol noted several times when Heard feared for her life, including during what Heard described as a "three-day hostage situation" in Australia in March 2015 while Depp was filming a "Pirates of the Caribbean" movie.

"I accept her evidence of the nature of the assaults he committed against her," the judge wrote about the episode in Australia. "They must have been terrifying."

Report: More Americans on diets than a decade ago

NEW YORK (AP) — If it seems like more and more people are on diets these days, you might not be imagining it.

A higher percentage of Americans said they're on a special diet to lose weight or for other health reasons compared with a decade ago, according to a report Tuesday by the U.S. Centers for Disease Control and Prevention.

The increase comes as obesity rates have continued to climb. The CDC report found that 17 percent of Americans said they were on diets during the 2017-2018 survey period, up from 14 percent a decade earlier. Over the same period obesity rates rose in the U.S. to 42 percent of Americans, up from 34 percent.

The percentage of Americans who said they're on a diet is lower than expected given prevalence of diet-related dis-

eases in the country, said Dana Hunnes, a professor of public health and nutrition at the University of California, Los Angeles.

The report notes that about half of American adults have diet-related chronic conditions, such as diabetes and heart disease, and that special diets are a way many people try to manage them. Hunnes cautioned, though, that many people might not consider the way they eat to be a diet.

The report also looked at responses between 2015 and 2018 to determine other characteristics of people on special diets:

- The heavier and more educated people were, the more likely they were to report being on a special diet. The report found 23 percent of Americans who are obese said they were on diets, compared with 17 percent of overweight people and 8 per-

cent of people who were normal weight or underweight.

• More women reported being on a diet than men.

• 18 percent of non-Hispanic white Americans, 16 percent of Hispanic Americans and 15 percent of Asian and Black Americans said they were diets.

• A higher percentage of people 40 and older said they were on diets than those ages 20 to 39.

• Between 2007-08 and 2017-18, diets described as "weight loss or low-calorie" grew in popularity, and remained the top category of special diet. Low-carbohydrate diets gained in popularity, while low-fat and low-cholesterol saw a decline.

The findings were based on an ongoing national survey in which participants were asked: "Are you currently on any

kind of diet, either to lose weight or for some other health-related reason?"

Becky Ramsing, a registered dietitian and senior program officer at Johns Hopkins Center for a Livable Future, said that the dietary changes people make in hopes of losing weight can vary greatly. And in some cases, she said people might not understand why the choices they're making aren't leading to weight loss.

"They won't eat bread, but then they'll go crazy, a lot of other things that are higher in calories," she said.

Many diet trends often focus on banning particular foods, Ramsing said. But to make lasting changes, she said people should consider their overall patterns of eating. That will also help address another pitfall of diets, she said: They're hard to stick to over time.

Exhibit 7

People Banner Ads



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PEOPLE.COM > HOME

Heather Dubrow and Husband Terry Are Building a House in Idaho: 'I Had This Lake House Fantasy'

"I fell in love and I'm designing a house right now," the *Real Housewives of Orange County* alum revealed

By **Nicholas Rice** | October 06, 2020 12:52 PM

Industrial Talc Asbestos Settlement

If you or a close relative ever filed an asbestos lawsuit based on exposure to **Emtal Talc**, used in the manufacturing of industrial products, you could receive a payment from a proposed \$72.5 million class action settlement.

[Click here to learn more.](#)

ADVERTISEMENT

**Talc Asbestos
Settlement**

If you or a close relative worked in a job involving
exposure to **Ernst Talc**, used in the manufacturing of
industrial products, you could receive a payment from a
proposed \$72.5 million class action settlement.

[Click here
to learn more.](#)



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PEOPLE.COM > CELEBRITY

Jennifer Lawrence and Husband Cooke Maroney Head to Lunch in N.Y.C., Plus Sophie Turner, Kevin Bacon and More

From Hollywood to New York and everywhere in between, see what your favorite stars are up to

By [People Staff](#) | Updated October 06, 2020 11:14 AM



PEOPLE.COM > SPORTS

Americans Danielle Collins & Sofia Kenin to Face Off in French Open Quarterfinals

Danielle Collins, 26, and Sofia Kenin, 21, will play on Wednesday, guaranteeing a spot for the U.S.A. in the semifinals

By Benjamin VanHoose

October 06, 2020 02:46 PM



Industrial Talc Asbestos Settlement

If you or a close relative ever filed an asbestos lawsuit based on exposure to **Emtal Talc** you could receive a payment from a proposed \$72.5 million class action settlement.

Click here to learn more.

Exhibit 8

Paid Search Terms

PAID SEARCH TERMS

1. Emtal Talc
2. Industrial Talc
3. BASF Catalysts
4. Industrial-Grade Talc
5. Engelhard Minerals
6. BASF
7. Engelhard
8. Rubber and Asbestos
9. Plastics and Asbestos
10. Ceramics and Asbestos
11. Mesothelioma but not Talcum or Body Powder
12. Mesothelioma but not Ovarian Cancer
13. Mesothelioma but not Cosmetic Talc
14. Asbestos and Mesothelioma but not Talcum or Body Powder
15. Asbestos and Mesothelioma but not Ovarian Cancer
16. Asbestos and Mesothelioma but not Cosmetic Talc

PAID SEARCH ADS

Filed An Emtal Talc Lawsuit? | You Might Be Eligible For Cash | \$72.5M Class Action Settlement

Ad www.example.com

Have you or a close relative ever filed an asbestos lawsuit based on Emtal Talc exposure? You could receive a payment from a proposed \$72.5 million class action settlement fund.

Industrial Talc Asbestos Case | You Could Receive A Payment | \$72.5M Class Action Settlement

Ad www.example.com

Have you or a close relative ever filed an asbestos lawsuit based on Emtal Talc exposure? You could receive a payment from a proposed \$72.5 million class action settlement fund.

Exhibit 9

Press Release

\$72.5 Million Class Action Settlement Fund Announced Covering Past Emtal Industrial Talc Litigation For Up To 19,000 Potential Claimants

NEWS PROVIDED BY

Emtal Talc Settlement Notice Agent →

Sep 17, 2020, 11:39 ET

RICHMOND, Va., Sept. 17, 2020 /PRNewswire/ -- The Notice Agent of the settlement reached in *Williams v. BASF Catalysts LLC, et al.*, C.A. No. 2:11-cv-01754

(D.N.J.) releases this information about the settlement.

Magistrate Judge Joseph A. Dickson of the United States District Court for the District of New Jersey, has preliminarily approved a class action settlement reached between Defendants BASF Catalysts, LLC ("BASF") and Cahill Gordon & Reindel LLP ("Cahill") and Plaintiffs to resolve claims relating to prior Emtal Talc litigation by creating a non-reversionary fund of \$72.5 million to pay up to 19,000 potential claimants and agreeing to pay fees and other expenses as described in the Settlement Agreement.

Emtal Talc was used in the manufacturing of industrial products. **This settlement does not involve any kind of personal cosmetic product such as baby, body, or talcum powder.** The settlement resolves a class action lawsuit in which Plaintiffs claim that from 1984 until 2009 Engelhard (BASF acquired Engelhard in 2006), its former national law firm Cahill, and employees of the two companies, made misstatements or concealed evidence about the existence of alleged asbestos in Emtal Talc and failed to disclose related information to plaintiffs, their lawyers, and courts in the Underlying Lawsuits. Plaintiffs claim that due to these

Case 2:11-cv-01754-BRM-AMF Document 638-7 Filed 08/19/21 Page 72 of 89 PageID: 49905
misstatements and omissions, Plaintiffs in the Underlying Lawsuits either (1) voluntarily agreed to dismiss or settle their cases for less than they otherwise would have accepted or (2) had their cases involuntarily dismissed by court order upon motions filed by the Defendants. Defendants deny Plaintiffs' allegations and dispute that any statements about Emtal Talc affected the outcome of the Underlying Lawsuits because Defendants contend that (1) the claims in the Underlying Lawsuits were without merit, (2) the amount of asbestos in Emtal Talc, as reported in historical documents, could not have caused harm to human health and (3) many of the Underlying Lawsuits were resolved for fixed amounts irrespective of the alleged asbestos content of the talc or the number of talc defendants. Defendants further contend that many of the complaints merely named Engelhard without any specific allegations regarding product identification, exposure, or damages. Plaintiffs dispute these arguments.

BASF also claims that it was not aware of the facts alleged by the Plaintiffs in this case when it bought Engelhard in 2006 and that BASF did not learn of the circumstances giving rise to Plaintiffs' allegations in this case until 2009.

BASF and Cahill have nevertheless agreed to settle this lawsuit in the interest of avoiding further costs and the uncertainty of litigation.

If the United States District Court for the District of New Jersey approves the settlement, then BASF and Cahill will pay \$72.5 million into a Settlement Fund to pay Class Members as follows: (a) \$6.25 million to those who prove they are Class Members; (b) \$59.75 million to those who sustained an asbestos-related injury; and (c) \$6.5 million to those who experienced an extraordinary physical injury and/or economic loss allegedly as a result of exposure to Emtal Talc, as well as an incentive award of \$300,000 to six plaintiffs who helped bring the case. BASF and Cahill have also agreed to pay court-approved attorneys' fees up to \$22.5 million, court-approved attorneys' expenses up to \$1.2 million, and up to \$3.5 million in notice and settlement administration costs.

Class Members may, beginning September 17, 2020 submit claims online at www.EmtalTalcSettlement.com. The website also provides instructions for how to file a claim in hard copy through the mail. The website also provides instructions for how to file a claim in hard copy through the mail. All claim forms must be filed by January 15, 2021.

The Court will hold a hearing on July 29, 2021 to consider whether to approve the settlement. Class Members have until December 16, 2020 to exclude themselves from, or object to, the settlement.

For more information, visit www.EmtalTalcSettlement.com or call 1-888-401-1929.

SOURCE Emtal Talc Settlement Notice Agent

Related Links

<http://www.emtaltalcsettlement.com>

Exhibit 10

Reminder Postcard Notice

IMPORTANT U.S. DISTRICT COURT REMINDER!

The deadline to file claims for settlement benefits is January 15, 2021.



\$72.5 Million
Emtal Talc Settlement

www.EmtalTalcSettlement.com

A Federal court preliminarily approved this Settlement. This is not a lawyer advertisement.

CLAIM FILING DEADLINE REMINDER

This is not a lawyer advertisement.

Williams v. BASF Catalysts LLC, et al., C.A.
No. 2:11-cv-01754 (D.N.J.)

The deadline to file claims for benefits in the \$72.5 million Emtal Talc Settlement is January 15, 2021. If you or a close relative ever filed an asbestos lawsuit based on exposure to Emtal Talc, you could receive a payment from a proposed class action settlement, but you must first file a timely and eligible claim. To do so, go to www.EmtalTalcSettlement.com.



You can also call
1-888-401-1929
about filing a claim
or the status of an
existing claim.

Scan this QR code with
a smartphone to go to
the settlement website

www.EmtalTalcSettlement.com

1-888-401-1929

Emtal Talc Settlement
Settlement Administrator
3967 Princeton Pike
Princeton, New Jersey 08540

CIN:
Relative ID:
Injured Party ID:



Notice ID: 123456789

John Claimant
123 Main Street
Apt. 5
Biloxi, MS 39532

FIRST-CLASS
MAIL U.S.
POSTAGE PAID
PERMIT NO
1234

Exhibit 11

Deadline Extension Postcard Notice

IMPORTANT U.S. DISTRICT COURT NOTICE!

Why am I receiving this notice? You previously received notice of a proposed class action settlement (“the Settlement”) in a case called *Williams v. BASF Catalysts LLC, et al.*, C.A. No. 2:11-cv-01754 (D.N.J.) (the “Williams Lawsuit”) regarding (a) claimed exposure to Emtal Talc (a brand of industrial talc) that allegedly caused asbestos bodily injury and (b) the related lawsuits that were filed (the “Underlying Lawsuits”) against Engelhard Corporation, BASF Catalysts, LLC, and certain of their subsidiaries (collectively, the “Underlying Defendants”) and eventually dismissed. As that prior notice explained, Cahill Gordon & Reindel LLP (“Cahill”) represented the Underlying Defendants in the Underlying Lawsuit, and the plaintiffs in the Williams Lawsuit allege that the Underlying Defendants and Cahill (collectively, the “Williams Defendants”) made misstatements or concealed evidence about the existence of alleged asbestos in Emtal Talc and failed to disclose related information before the dismissal of the Underlying Lawsuits. The Williams Defendants deny these allegations. You are receiving this new notice because the Court overseeing the proposed Settlement extended certain important deadlines.

What deadlines changed, and what do those deadlines mean?

- 1. Claim Submission Deadline** – To receive a payment, you must submit a timely, complete, and eligible claim. The new Claim Submission Deadline is March 16, 2021. You can go to the Settlement website, www.EmtalTalcSettlement.com, to file a claim and submit required supporting documents online. The website also provides instructions for how to file a claim in hard copy and submit supporting documents through the mail.
- 2. Opt Out Deadline** – If you are a Class Member but do not want to be included in the Settlement, you must exclude yourself from, or “opt out” of, the Settlement. The new Opt Out Deadline is February 16, 2021. If you exclude yourself, you will get no payment, but you will keep your right to sue the defendants about the claims in this case. Read the detailed notice on the Settlement website at www.EmtalTalcSettlement.com for instructions on how to opt out.
- 3. Objection Deadline** – If you remain in the Settlement but do not like it, you may object to the Settlement. The new Objection Deadline is February 16, 2021. Read the detailed notice on the Settlement website at www.EmtalTalcSettlement.com for detailed instructions on how object.

NOTICE OF EXTENDED CLAIM FILING DEADLINE

This is not a lawyer advertisement.

Williams v. BASF Catalysts LLC, et al., C.A. No.
2:11-cv-01754 (D.N.J.)

The Court overseeing the \$72.5 million Emtal Talc Settlement extended certain deadlines:

1. Claims Filing Deadline: **March 16, 2021**
2. Opt Out Deadline: **February 16, 2021**
3. Objection Deadline: **February 16, 2021**

If you or a close relative ever filed an asbestos lawsuit based on exposure to Emtal Talc, read the reverse side of this postcard for more information.



You can also call
1-888-401-1929
for information
about the settlement
and your options.

Scan this QR code with
a smartphone to go to
the settlement website

www.EmtalTalcSettlement.com
1-888-401-1929

Emtal Talc Settlement
Settlement Administrator
3967 Princeton Pike
Princeton, NJ 08540

FIRST-CLASS
MAIL U.S.
POSTAGE PAID
PERMIT NO
1234



Notice ID: 123456789

John Claimant
123 Main Street
Apt. 5
Biloxi, MS 39532

Exhibit 12

FJC Checklist

Emtal Talc Settlement: Judges' Class Action Notice and Claim Process Checklist

A. MAJOR CHECKPOINTS



Will notice effectively reach the class?

Yes. The notice campaign is estimated to have reached more than 84% of the class. The Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide targets 70-95% reach among class members and relates that the average reach among approved class actions is 84%.



Will the notices come to the attention of the class?

Yes. While counsel drafted the long-form Notice (the "Notice"), the summary versions of the notice were designed with headlines and formatting to grab a reader's attention.



Are the notices informative and easy to understand?

Yes. The notices provide all the information needed by a Class Member to make an informed decision regarding the settlement, as required by Rule 23(c)(2)(B) and are written in plain language.



Are all of the rights and options easy to act upon?

Yes. The Notice explains the easy steps to remain in the class and assert a claim, opt out of, or object to the settlement.

B. BEFORE CERTIFICATION/PRELIMINARY SETTLEMENT APPROVAL



Can any manageability problems from notice issues be overcome?

The notices to this class do not present any manageability problems.



Can a high percentage of the proposed class be reached (i.e., exposed to a notice)?

Yes. We reached an estimated more than 84% of the class through direct notice.

Emtal Talc Settlement: Judges' Class Action Notice and Claim Process Checklist

B. BEFORE CERTIFICATION/PRELIMINARY SETTLEMENT APPROVAL



Is it economically viable to adequately notify the class?

Yes. We worked with the parties to develop an effective but cost-conscious notice plan that benefits from a high percentage of Class Members being reachable directly by mail and supplemented by cost-effective public notice placements.



Will unknown Class Members understand that they are included?

Yes. We designed a plan to reach unknown Class Members by print and digital media.

C. UPON CERTIFICATION/PRELIMINARY SETTLEMENT APPROVAL



Do you have a "best practicable" notice plan from a qualified professional?

Yes. BrownGreer is a qualified professional firm with deep expertise in class actions, notices and settlement administration, and coordinated with the parties to design a Notice Plan that achieved the best practicable notice to the class.



Do you have unbiased evidence supporting the plan's adequacy?

Yes. The parties engaged BrownGreer as an independent, neutral Notice Agent and relied upon the advice and opinions of the firm to develop the Notice Plan and assure its sufficiency.



Have plain language forms of notice been created?

Yes. While BrownGreer did not create and offer no opinions on the language of the Notice, the summary notices were modeled after the language used in the samples furnished by the Federal Judicial Center, and were written in a reader-friendly, understandable way.

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C. UPON CERTIFICATION/PRELIMINARY SETTLEMENT APPROVAL



Will a qualified firm disseminate notice and administer response handling?

Yes. BrownGreer is fully qualified by its experience and training to disseminate the notices and handle all responses by the class to the notices.

D. NOTICE PLAN



Is the notice plan conducive to reaching the demographics of the class?

Yes. The Notice Plan relied primarily on direct notice reach to Class Members and Relatives, and the public notice campaign was developed based on an analysis of Class Member and Relative demographics, including age and location.



Is the geographic coverage of the notice plan sufficient?

Yes. The Notice Plan reached persons throughout the United States and appropriate territories, with a targeted regional focus for the public notice campaign.



Is the coverage broad and fair? Does the plan account for mobility?

Yes. The Notice Plan contemplated that mailing addresses for potential Class Members and Relatives would be updated and verified through the National Change of Address system and the LexisNexis compendium of domestic addresses, and the public notice campaign included national placements.



Is there an extra effort where the class is highly concentrated?

Yes. We placed print ads in over 30 regional print publications where the majority of potential Class Members and Relatives are located.

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D. NOTICE PLAN



Does the plan include individual notice?

Yes. Based on preliminary data analysis and representations of counsel, the Notice Plan reached more than 84% of the class through direct, individual notice.



Did you receive reliable information on whether and how much individual notice can be given?

Yes. We coordinated closely with the Settlement Administrator and Counsel for the parties to develop the direct mailing lists.



Will the parties search for and use all names and addresses they have in their files?

Yes. The notices were sent to every potential Class Member identified in class data.



Will outdated addresses be updated before mailing?

Yes. BrownGreer cross-referenced the initial mailing addresses against the USPS National Change of Address before mailing. For all mail returned as undeliverable, we re-mailed to any different address returned by the USPS and researched better addresses using the LexisNexis compendium of address databases to permit re-mailing.



Has the accuracy of the mailing list been estimated after updating efforts?

Yes. Based on preliminary data analysis, we estimated that the mailing lists we developed would include accurate mailing addresses for more than 70% of potential Class Members or their Relatives. After execution, we reached an estimated 84% directly.



Has the percentage of the class to be reached by mail been calculated?

Yes. We estimated that our efforts would yield successful mailing to more than 70% of the class or relatives of deceased Class Members, and we reached closer to 84%.

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D. NOTICE PLAN



Are there plans to re-mail notices that are returned as undeliverable?

Yes. The Notice Plan contemplated detailed steps to re-mail returned mail, which we completed.



Will e-mailed notice be used instead of postal mailings?

We did not have email addresses for Class Members.



Will publication efforts combined with mailings reach a high percentage of the class?

The direct notice efforts, supplemented by a public notice campaign, reached an estimated 84% of the class or their relatives if they were deceased.



Are the reach calculations based on accepted methodology?

Yes. The reach calculations for direct notice rely on actual notice delivery data supplied by the USPS and captured by BrownGreer personnel.



Is the net reach calculation thorough, conservative, and not inflated?

Yes. We have been careful not to overstate the reach expected from the Notice Plan efforts.



Do the reach calculations omit speculative reach that only might occur?

Yes. The reach calculations are based on an analysis of notices that did not return as undeliverable.

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D. NOTICE PLAN



Is any Internet advertising being measured properly?

We relied upon online ad performance data, such as impressions and frequency, provided by a third party specializing in online marketing for law firms.



Is non-English notice necessary?

We understood that effectively all Class Members speak and understand English, and accordingly, we did not plan for non-English notices.



Does the notice plan allow enough time to act on rights after notice exposure?

Yes. The Settlement and subsequent Orders from the Court allowed nearly five months from the first issuance of class notice for Class Members to opt out or object and six months from the first issuance of class notice to file a claim.



Will key documents be available at a neutral website?

Yes. The Claims Administrator made key documents available on the settlement website at www.EmtalTalcSettlement.com



Can the class get answers from a trained administrator or from class counsel?

Yes. The notices alerted Class Members on how to obtain information from the Settlement Program's resources.



Are the notices designed to come to the attention of the class?

Yes. The summary notices developed by BrownGreer contained headlines and concise statements to spike attention and to prompt viewers to continue reading.

Emtal Talc Settlement: Judges' Class Action Notice and Claim Process Checklist

E. NOTICE DOCUMENTS



Does the outside of the mailing avoid a “junk mail” appearance?

Yes. The notices were folded and enclosed within envelopes with the Settlement Program name in the return addressee line and avoided extra words and images that would make the notices appear as junk mail.



Do the notices stand out as important, relevant, and reader-friendly?

Yes. The summary notices designed by BrownGreer followed the models supplied by the Federal Judicial Center to achieve these goals.



Are the notices written in clear, concise, easily understood language?

Yes. To the extent reasonably possible, the language of the summary notice is non-legalistic and is clear and easy to understand. The Parties designed the long-form Notice and BrownGreer has not offered its opinion on the design, language, or format of that Notice.



Do the notices contain sufficient information for a class member to make an informed decision?

The Parties designed the long-form Notice and BrownGreer did not offered its opinion on the content of that Notice.



Do the notices include the Rule 23 elements? Even the summary notice?

Yes. The summary notice addressed all seven elements listed in Rule 23(c)(2)(B).



Have the parties used or considered using graphics in the notices?

Yes. The summary notices contained text boxes and variations in color where possible and appropriate, without becoming distracting.

Dental Crown Settlement: Judges' Class Action Notice and Claim Process Checklist

E. NOTICE DOCUMENTS



Does the notice avoid redundancy and avoid details that only lawyers care about?

Yes. The summary notices do not repeat information and provide only details required by Rule 23 and that would be helpful in Class Members understanding their rights under the settlement.



Is the notice in "Q&A" format? Are key topics included in logical order?

BrownGreer did not design or consult with the Parties on the long-form Notice and does not offer an opinion on its contents. However, the summary notice does follow a Q&A format in a logical order.



Are there no burdensome hurdles in the way of responding and exercising rights?

The Claims Administrator, Verus, managed the opt-out, objection, and claim filing processes. BrownGreer does not offer an opinion on those processes.



Is the size of the notice sufficient?

Yes. The summary notices contain detailed, but clear, explanations of the critical aspects of the settlement.



Is a claims process actually necessary?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.



Does the claims process avoid steps that deliberately filter valid claims?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.

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F. CLAIMS PROCESS



Are the claim form questions reasonable, and are the proofs sought readily available to the class member?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.



Is the claim form as short as possible?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.



Is the claim form well-designed with clear and prominent information?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.



Have you considered adding an online submission option to increase claims?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.



Have you appointed a qualified firm to process the claims?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.



Are there sufficient safeguards in place to deter waste, fraud, and/or abuse?

As the Notice Agent, BrownGreer was not involved in the development of the claims filing process.