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August 7, 2006

*By E-Mail and First Class Mail*

Ralph J. Lancaster, Jr., Esq.  
Pierce Atwood  
One Monument Square  
Portland, ME 04101

**Re: *New Jersey v. Delaware*, No. 134 Original: Delaware's Sixth Progress Report**

Dear Mr. Lancaster,

Pursuant to the Case Management Plan ("CMP") as amended, we respectfully submit Delaware's sixth progress report on the status of the case.

**1. May 31, 2006 Discovery Requests.** As mentioned in Delaware's July 7, 2006 progress report, Delaware served its responses to New Jersey's initial discovery requests on June 30, 2006, and produced more than 21,000 pages of documents in electronic form to New Jersey on June 30 and July 19, 2006. (At New Jersey's request dated July 25, 2006, on July 26, 2006 Delaware also provided the best available paper copies of nine hard-to-read documents, consisting of approximately 100 pages.)

Due to flooding in its offices and a state government furlough of its legal staff, New Jersey did not likewise serve its responses to Delaware's initial discovery requests as originally scheduled on June 30, 2006. That and other subsequent discovery dates were adjusted in Case Management Order ("CMO") No. 10 to accommodate New Jersey, but without altering the November 30, 2006 deadline for dispositive motions originally set in CMP § 15. Delaware agreed to that additional extension for New Jersey believing that, when New Jersey produced its documents, that production would comply with the Case Management Plan's requirements.

On July 14, 2006, pursuant to CMO No. 10, New Jersey served its responses to Delaware's initial discovery requests. Delaware received New Jersey's initial production of documents on Saturday, July 15.

By letter dated July 18, 2006, Delaware promptly began the meet-and-confer process by calling to New Jersey's attention a number of deficiencies in New Jersey's production of documents, largely concerning improper and/or duplicative bates numbering and a missing range

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of documents, which has made Delaware's preparation for subsequent stages of the case both difficult and burdensome. A number of subsequent follow-up requests by Delaware to correct those errors went unanswered by New Jersey for nearly three weeks. Just this morning, on August 7, 2006 (by letter dated Friday, August 4, 2006), Delaware finally received a response from New Jersey consisting of replacement CDs for New Jersey's entire document production of July 15, 2006.

Although we have had these materials for less than a day, it is already apparent from our review that this production also does not comply with the Case Management Plan in numerous respects. Various documents contained Bates stamps that were partially or completely illegible. Furthermore, and despite Delaware's previous request for page breaks, the enclosed files do not include any page breaks, thus making it very difficult for Delaware to differentiate the various documents contained in the CDs. Finally, Delaware is uncertain as to the status of documents produced by New Jersey in October of 2005 and documents enclosed on July 14, 2006, and again on August 7, 2006. Roughly four hundred pages in the October of 2005 production shared similar Bates numbers with documents produced in July and August of 2006 even though the documents were not identical. Delaware is uncertain whether New Jersey no longer intends to rely on the documents produced in October of 2005, and will be meeting and conferring with New Jersey to clarify this matter. In any case, Delaware is concerned about these issues and their effect on Delaware's ability to defend the suit in an efficient manner.

By letter dated July 25, 2006, New Jersey wrote to Delaware citing purported deficiencies in Delaware's responses to New Jersey's document requests and interrogatories. By letter dated July 26, 2006, Delaware responded to each of New Jersey's concerns. On August 2, 2006, New Jersey wrote to Delaware with numerous clarifications to its July 25, 2006 letter, to which Delaware will soon respond. Also on August 2, 2006, Delaware wrote to New Jersey identifying deficiencies in New Jersey's initial discovery responses, and presumes that New Jersey will respond to those concerns in a timely manner.

**2. Other Discovery.** On July 14, 2006, pursuant to CMO No. 8, Delaware served its Second Request for Production of Documents and its Second Set of Interrogatories directed to New Jersey. New Jersey's responses are due on August 13.

With respect to third-party discovery, on July 14, 2006, Delaware received documents in response to Delaware's subpoena directed to DuPont. Delaware has also continued its search for relevant historical and legal documents.

In sum, Delaware is attempting to work with New Jersey to keep the case moving forward efficiently, but is concerned that the substantial delay by New Jersey in responding to Delaware's concerns about New Jersey's document production and its apparent continuing inability to comply with Case Management Plan procedures will create additional discovery burdens on Delaware.

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Respectfully,

A handwritten signature in black ink that reads "David C. Frederick". The signature is written in a cursive style with a large, stylized initial "D".

David C. Frederick

cc: Rachel J. Horowitz, Esq.  
Barbara Conklin, Esq.  
Collins J. Seitz, Jr., Esq.