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Case No. 2020-0786-SG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF HIALEAH EMPLOYEES' RETIREMENT SYSTEM, Derivatively on Behalf of THE CHEMOURS COMPANY, Plaintiff, v. MARK P. VERGNANO, RICHARD H. BROWN, CURTIS V. ANASTASIO, BRADLEY J. BELL, MARY B. CRANSTON, CURTIS J. CRAWFORD, DAWN L. FARRELL, SEAN D. KEOHANE, ERIN N. KANE, STEPHEN D. NEWLIN, and MARK E. NEWMAN, Defendants, -and- THE CHEMOURS COMPANY, a Delaware Corporation, Nominal Defendant.	C.A. No. 2020-0786-SG **PUBLIC [REDACTED] VERSION AS FILED ON SEPTEMBER 21, 2020**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff City of Hialeah Employees' Retirement System ("Plaintiff"), derivatively on behalf of The Chemours Company (the "Company," "Chemours," or "Nominal Defendant"), brings the following Verified Stockholder Derivative Complaint (the "Complaint") against the defendants named herein for violations of

8 *Del. C.* §§ 160, 170, 173, and 174, breaches of fiduciary duty, and unjust enrichment. The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on information and belief, including the investigation of counsel, the review of publicly available information, and the review of certain books and records produced by the Company in response to Plaintiff's demand made under 8 *Del. C.* § 220 (the "220 Demand") as to all other matters.

I. NATURE OF THE ACTION

1. This case arises because the Chemours's senior management and board of directors (the "Board") knew, or at the very least had every reason to know, that the Company's inherited and ever-expanding contingent liabilities left the Company insolvent from the moment of the Company's formation and subsequent 2015 spin-off (the "Spin-Off") from E. I. DuPont de Nemours and Company ("DuPont"). Thereafter, despite regularly discussing (but not publicly disclosing) the Company's crippling environmental liabilities, the Board nevertheless approved approximately ***$1.66 billion*** of share repurchases and dividends.

2. As explained below, the magnitude of Chemours's inherited liabilities became starker with time. Nevertheless, the Chemours Board continued and expanded the Company's share repurchase program right up to the month in mid-

2019, when Chemours specifically alleged ***its own*** resulting insolvency in a complaint filed in this Court against DuPont.

3. Through Sections 160, 170, 173, and 174, Delaware's legislature chose to regulate unlawful share repurchase plans and dividends by creating a statutory claim premised on negligence. Directors of Delaware corporations do not typically face liability for negligence. Yet Section 174 not only expressly makes directors liable for negligence in approving stock repurchases or dividends without legally available funds, it also extends the statute of limitations for such claims from three to six years and explicitly excludes them from the exculpation provisions of Section 102(b)(7). Supplementing this statutory regime, the State's common law regulates breaches of duty, including by prohibiting share repurchase plans and dividend issuances approved or effected in bad faith or without sufficient disclosures to stockholders.

4. As described herein, while mere negligence is sufficient to create liability here, the Board's misconduct smacks of recklessness and bad faith.

* * * * *

5. DuPont's scientists have studied and recognized for decades that the Company's Performance Chemicals division, which became Chemours through the Spin-Off, was harming groundwater drinking supplies and the air near DuPont's

chemical plants. DuPont's principal—but not only—culprit toxic chemicals were perfluoroalkyl and polyfluoroalkyl substances ("PFAS").

6. By 2013, desperate to stave off repeated activist attacks on management's inability to generate earnings growth, DuPont's board of directors decided to shed the overhang from its PFAS business and related liabilities through the Spin-Off. As explained *infra* in Section III.B, DuPont's decision to transfer contingent environmental exposure (and pay itself a multi-billion-dollar dividend in the process) went from opportunistic to voracious, alarming Chemours's management.

7. The separation agreement (the "Separation Agreement") that DuPont imposed on Chemours required the latter to defend and indemnify DuPont against any liability "relating to, arising out of, by reason of or otherwise in connection with" the liabilities that DuPont had assigned to Chemours ***without limitation***, and provided that Chemours could not seek any recourse from DuPont with respect to any of those liabilities.

8. Since it was transferring uncapped contingent environmental liabilities along with limited assets, DuPont could not complete the Spin-Off without a financial solvency opinion. DuPont could not get such an opinion through any

legitimate assessment of Chemours's reasonably expected exposure. Instead, it manipulated the inputs so it could back into a solvent-looking balance sheet.

9. In May 2015, DuPont asked Chemours's then-chief financial officer ("CFO"), Defendant Newman, to certify the accuracy of a list of "High End (Maximum) Realistic Exposure" numbers with respect to scores of transferred contingent liabilities. Newman refused, agreeing only to sign a narrow certification that the liability numbers came from DuPont and that he was not vouching for their accuracy. Various individuals who would become executives and directors of Chemours upon the Spin-Off expressed their concerns that Chemours could be insolvent "on day one." DuPont nevertheless proceeded with the Spin-Off.

10. As discussed *infra* in Section III.D.2, Chemours has now ***admitted*** that by assuming these uncapped liabilities under the Separation Agreement, Chemours was insolvent ***at the time of the Spin-Off***.

11. Nevertheless, shortly after the Spin-Off, Chemours's Board began approving dividends—a clear signal to stockholders that their company was well-capitalized and solvent.

12. As explained *infra* in Sections III.C.2 and III.C.3, the lawsuits against Chemours piled up following the Spin-Off, and investors increasingly raised concerns about Chemours's ability to handle those contingent liabilities. [redacted]

[redacted] the Board ***twice*** increased the Company's dividends, representing an over seven-fold increase in quarterly payments over a three-year period—at the same time its massive contingent liabilities were coming home to roost.

13. Meanwhile, Chemours's chief executive officer ("CEO"), Defendant Vergnano aggressively sold the Company's "Five-Point Transformation Plan." In an interview with *Fortune* magazine on May 18, 2016, Vergnano said:

> You had this high dividend put on us as well as all this debt [at the time of the Spin-Off]. . . . So I think investors were worried if we were going to be solvent—were we going to make it through this or not?
>
> We immediately went out to explain our transformation plan to investors. . . . So right from the start we put together what we called our "Five-Point Transformation Plan," which was all about getting the company de-levered as quickly as possible.

14. [redacted], management insisted to the Company's stockholders that the balance sheet was strengthening and rapidly de-levering.

15. Then, in November 2017, the Chemours Board sent the clearest possible message supporting the Company's ability to handle its liabilities and that the Company's stock was undervalued—approving a $500 million share repurchase plan. As set forth *infra* in Sections III.C.3.c and III.E.1, the Board's share repurchase

plan was renewed and expanded, ultimately resulting in over $1.07 billion in stock repurchases.

16. As noted, the legislature has clearly prohibited companies from paying dividends and repurchasing shares while insolvent. Pursuing a share repurchase program while insolvent, however, raises far more significant problems. After all, a dividend is, by definition, paid out to all investors *pro rata* and without discrimination. When a corporation uses a share repurchase plan, however, it is imperative to properly advise the stockholders of the material facts so that they can assess whether to transact or hold their securities.

17. As late as January 7, 2019, Chemours management publicly asserted that in "no way" had Chemours been "set up to fail," and that it had successfully completed a "turnaround" that was "nothing short of remarkable."

18. The Board and management team had many personal reasons to signal that the stock was undervalued and the Company's finances were in order by expanding their share repurchase efforts, including by selling of their own Company stock at artificially inflated prices.

19. In reality, however, and as Chemours would admit in May 2019, it had not "transformed" itself from being on the brink of its insolvency, its liabilities were nowhere near "well managed," and any stockholder with candid reporting from the

Board would have rushed to sell his or her shares rather than continue sitting on a financial time bomb.

20. On May 13, 2019, barely a week after Glenview Capital Management founder Larry Robbins ("Robbins") publicly disclosed his (correct) thesis about Chemours's insolvency in light of its environmental exposure, Chemours filed a remarkable complaint under seal in this Court against DuPont (the "DuPont Complaint"). *See The Chemours Company v. DuPont Inc.*, C.A. No. 2019-0351-SG (Del. Ch.). On June 28, 2019, the Court unsealed the DuPont Complaint.

21. In the DuPont Complaint, further discussed *infra* in Section III.D.2, the Company belatedly admitted that it had not successfully been "transformed" or able to manage its inherited environmental liabilities. In truth, DuPont had saddled Chemours with liabilities so massive (about ***$2.56 billion***, based on Chemours's own conservative estimate) that Chemours was "insolvent" from the date of the Spin-Off.

22. According to Chemours itself, the "entire spin-off process was a sham" and DuPont deliberately "engineered a vastly understated valuation of the liabilities it would impose on Chemours to try to square the spin-off with Delaware law." Chemours alleged that if the Separation Agreement is enforced as written, Chemours "***would have been insolvent as of the time of the spin-off***."

23. Chemours's counsel confirmed this admission at a hearing on December 18, 2019, where he stated that "***in no uncertain terms***," "***as of the date of the spin, Chemours was insolvent***." Chemours's counsel did not stop there:

> THE COURT: That was my understanding, that you were saying that setting aside the excess over the estimation of the environmental liabilities, there was no cushion. Is that what you were --
>
> CHEMOURS COUNSEL: That was our position, Your Honor. ***You have that straight on***. And we have alleged that the liability maximums were undertaken to satisfy Delaware law; that they were undertaken in a way that can only lead to an inference of bad faith, because they were just manifestly evidently designed to undercount the liability hugely; and that they did, in fact, undercount the liability hugely, as has been demonstrated; and that, in consequence, ***the company was not solvent at the time it was spun***.

24. Chemours's counsel also explained that, unbeknownst to the market, Chemours not only privately raised the issue of DuPont's massively understated liabilities to DuPont at the time of the Spin-Off, but ***it had been doing so for the entirety of the four years since***. Specifically, Chemours's counsel stated, in response to the question of why Chemours had not filed suit against DuPont four years ago: "Chemours has been objecting to the interpretation of these estimated liability maximums [by DuPont] for four years." Accordingly, some or all of the

Individual Defendants ***knew*** about the indemnification issue under the Separation Agreement during the ***entire independent existence*** of Chemours.

25. The Board necessarily knew about the scope of indemnification (and resulting insolvency) that DuPont had consistently asserted it imposed on Chemours. As such, it was bad faith, and at the least negligent, for the Board to have approved about $1.66 billion in repurchases and dividends since the Spin-Off, and surely a breach of duty to pursue the repurchase plan without giving stockholders the material information they need to determine whether to sell their shares into that plan.

26. If, as the Company admitted in the DuPont Complaint, Chemours was insolvent as of the Spin-Off, then these stock repurchases violated 8 *Del C.* §§ 160 and 174, and these dividends violated 8 *Del. C.* §§ 170, 173, and 174. In the alternative, even if Chemours was not legally insolvent under Delaware law at the time of each of the stock repurchases and the dividends, the Director Defendants breached their fiduciary duties by authorizing the share repurchases and the dividends when they knew that the Company faced a serious risk of insolvency, and at a time when management had made materially misleading disclosures pertaining to the Company's liabilities and solvency.

II. PARTIES AND RELEVANT NON-PARTIES

A. Plaintiff

27. Plaintiff has held shares of Chemours common stock at all times relevant hereto.

B. Nominal Defendant

28. Nominal Defendant Chemours is a Delaware corporation with principal executive offices located at 1007 Market Street, Wilmington, Delaware. Chemours is a provider of industrial and specialty chemicals products for markets including plastics and coatings, refrigeration and air conditioning, general industrial, electronics, mining, and oil refining. Chemours operates through three main segments: Fluoroproducts, Chemical Solutions, and Titanium Technologies. Chemours was spun off from DuPont on or around July 1, 2015. As of December 31, 2019, Chemours had approximately 7,000 employees.

C. Defendants

29. Defendant Mark P. Vergnano ("Vergnano") has been Chemours's President, CEO, and a director since July 2015. While in possession of material, nonpublic information concerning Chemours's true business health, Vergnano sold 200,151 shares of his stock for $10,101,600.18 in proceeds.

30. Defendant Richard H. Brown ("Brown") has been the Chairman of the Board and a director since July 2015. Brown also served on DuPont's board of directors from 2001 to 2015.

31. Defendant Curtis V. Anastasio ("Anastasio") has been a Chemours director since July 2015. Anastasio has been a member of the Board's Audit Committee (the "Audit Committee") since at least March 2016.

32. Defendant Bradley J. Bell ("Bell") has been a Chemours director since July 2015. Bell is the Chairman of the Audit Committee and has been a member of the Audit Committee since at least March 2016.

33. Defendant Mary B. Cranston ("Cranston") has been a Chemours director since July 2015. Cranston has been a member of the Audit Committee since at least March 2016.

34. Defendant Curtis J. Crawford ("Crawford") has been a Chemours director since July 2015. Crawford also served on DuPont's board of directors from 1998 to 2015. Crawford has been a member of the Audit Committee since at least March 2016.

35. Defendant Dawn L. Farrell ("Farrell") has been a Chemours director since July 2015.

36. Defendant Sean D. Keohane ("Keohane") has been a Chemours director since May 2018.

37. Defendant Erin N. Kane ("Kane") has been a Chemours director since June 2019. Kane has been a member of the Audit Committee since at least July 2019.

38. Defendant Stephen D. Newlin ("Newlin") was a Chemours director from July 2015 to May 2018.

39. Defendant Mark E. Newman ("Newman") has been Chemours's Senior Vice President since November 2014 and Chief Operating Officer since June 2019. Newman was Chemours's CFO from November 2014 to June 2019. While in possession of material, nonpublic information concerning Chemours's true business health, Newman sold 155,047 shares of his stock for $6,803,491.74 in proceeds.

40. Defendants Vergnano and Newman are referred to herein as the "Officer Defendants." Defendants Vergnano, Brown, Anastasio, Bell, Cranston, Crawford, Farrell, Keohane, Kane, and Newlin are referred to herein as the "Director Defendants." Collectively, the Director Defendants and Newman are referred to herein as the "Individual Defendants."

D. Relevant Non-Party

41. DuPont, the former parent company of Chemours, is a Delaware corporation and a wholly owned subsidiary of Corteva, Inc. ("Corteva"). Founded in 1802, DuPont was a publicly traded company that operated businesses organized into the following categories: Electronic and Communication Technologies, Performance Materials, Coatings and Color Technologies, Safety and Protection, and Agriculture and Nutrition. In the twentieth century, DuPont developed many polymers such as neoprene, nylon, Teflon, Kevlar, and Lycra. DuPont also developed Freon (chlorofluorocarbons) for the refrigerant industry.

42. On August 31, 2017, DuPont and The Dow Chemical Company ("Dow") merged to form the world's largest chemical conglomerate, DowDuPont Inc. ("DowDuPont"). In April 2019, DowDuPont separated into three companies: (a) Dow Inc., which focuses on commodity chemical production; (b) DuPont de Nemours, Inc., which focuses on specialty chemical production; and (c) Corteva, which focuses on agriculture.

III. FACTUAL BACKGROUND

A. DuPont'sExtensive History Of Discharging PFAS And Other Toxic Chemicals Into The Environment

43. DuPont's Performance Chemicals division, which it later spun off to form Chemours, had a decades-long history of discharging toxic chemical

substances, including PFAS, into groundwater drinking supplies and the air near its chemical plants.

44. Prior to the Spin-Off, DuPont had manufactured PFAS for over 80 years. PFAS are man-made industrial compounds used in everyday household products, such as non-stick cookware (*e.g.*, Teflon), water repellants (*e.g.*, Scotchgard), and coated papers used to package food. Designed for extreme durability, PFAS does not break down in the environment; these "forever chemicals" also build up, or "bio-accumulate," in the blood streams of people and animals that ingest contaminated water or breathe contaminated air. Bio-accumulation of PFAS contributes to or causes adverse health effects, including fatal cancers.

45. The public remained unaware of the dangers of PFAS until relatively recently—it took until the fall of 2019 for Congress to direct a subcommittee to consider legislation to regulate these potentially lethal chemicals. Yet,DuPont and Chemours knew about these dangers for decades. During a Congressional hearing held on September 10, 2019, by the House Subcommittee on the Environment (the "House Subcommittee"), longtime PFAS plaintiffs' attorney Robert A. Bilott testified as to the risk to human health detailed in the companies' internal files.

46. These "internal files," which the House Subcommittee also reviewed, contained the results of several decades of extensive internal research by DuPont

into the damage PFAS —especially perfluorooctanic acid ("PFOA")—did to human (and animal) health.

47. DuPont's scientists began documenting the health effects of PFAS in the 1950s. Over the following two decades, animal study data revealed PFAS produced toxic effects on multiple mammalian species—including rats, dogs, rabbits, and monkeys—and multiple types of organ systems. By the 1970s, DuPont officials also had evidence of the bio-accumulation of PFAS in human bloodstreams.

48. In the 1980s, DuPont banned all female employees from Teflon-related jobs over concerns about birth defects and liver damage that PFAS exposure caused. DuPont also conducted internal animal studies that led DuPont to label PFOA as a possible human carcinogen. In the 1990s, a DuPont animal study confirmed that PFOA exposure could cause testicular, liver, and pancreatic tumors, and DuPont scientists concluded that exposure posed similar risks of testicular tumors in humans. Other DuPont studies from that decade found elevated cancer rates among workers, including at the Washington Works site, and that male PFOA workers faced increase likelihood of death from prostate cancer.

49. As information regarding the toxicity of PFAS became public, DuPont's Performance Chemical division's devastating discharge of toxic PFAS into the environment over the decades spurred litigation throughout the nation.

50. That litigation in turn impelled more comprehensive scientific studies evidencing the severe harms of PFAS exposure. In 2005, to settle a PFOA case regarding contamination from DuPont's Washington Works site in Parkersburg, West Virginia, DuPont agreed to fund a "medical monitoring" health project. As part of the settlement, DuPont empaneled a team of experts for the project who studied the blood of approximately 70,000 area residents to assess the effects of PFOA exposure on the local population.

51. The panel published its analysis in 2012, finding "probable links" between PFOA exposure and high cholesterol, ulcerative colitis, pregnancy-induced hypertension, thyroid disease, testicular cancer, and kidney cancer. These findings led to approximately 3,550 individuals, including approximately 250 victims with kidney or testicular cancer, coming forward as having been diagnosed with one of these diseases due to PFOA exposure from Washington Works. In turn, these victims filed a multidistrict litigation in the U.S. District Court for the Southern District of Ohio against DuPont (the "Ohio MDL"). In 2015, via the Separation Agreement, Chemours agreed to indemnify DuPont for all liability arising out of the Ohio MDL.

52. Meanwhile, as DuPont belatedly confronted the adverse health consequences of PFOA exposure, it attempted to shift to a different type of PFAS, called "GenX," which was supposedly less toxic.

53. In 2009, the U.S. Environmental Protection Agency ("EPA") reviewed data submitted by DuPont for two types of GenX compounds. The EPA, however, found that, just like PFAS, GenX compounds "persist in the environment" and "could bio-accumulate, and be toxic . . . to people, wild animals, and birds." The EPA therefore issued a consent order (the "Consent Order," also later inherited by Chemours) stating that "uncontrolled . . . disposal of [GenX] may present an unreasonable risk of injury to human health and the environment" and requiring DuPont to recover, destroy, or recycle GenX at a 99% rate from all effluent process streams and air emissions.

B. DuPont Effectuates The Spin-Off And Saddles Chemours With Massive Liabilities

54. Facing snowballing exposure to environmental remediation expenses and to costly PFAS-related litigation, in 2013 DuPont commenced restructuring its businesses to strip off and spin out its Performance Chemicals division and its associated liabilities. This plan, called "Project Beta," culminated in the formation of Chemours as an independent, publicly-traded company which, as the Individual Directors were aware, was saddled with existential short- and long-term liabilities.

1. DuPont Wards Off An Activist Investor By Leveraging A Spin-Off To Shed Liabilities And Raise A Multi-Billion Dollar Dividend

55. As "Project Beta" proceeded, DuPont realized that the sheer magnitude of these environmental liabilities meant that an outright sale of the Performance Chemicals division would not be fruitful, because no buyer would assume such uncapped (and potentially disastrous) liabilities without a steep purchase price discount. Accordingly, DuPont engineered an alternative transaction—a divestment of its Performance Chemicals division through a spin-off.

56. Later in 2013, Project Beta assumed more urgency after the activist hedge fund Trian Fund Management L.P. ("Trian") took a stake in DuPont and began agitating for change. Trian argued that DuPont had failed as a conglomerate and should separate into three independent entities, focused on agriculture, specialty chemicals and performance chemicals, respectively. Trian also argued that DuPont's management lacked the skills to execute a reorganization. Among other things, Trian observed that DuPont had recently sold its Performance Coatings business (called Axalta) to private equity firm Carlyle Group L.P. ("Carlyle"), which promptly discovered an additional $229 million in annual earnings—confirming, Trian argued, DuPont's bloat and incompetence. "[B]y not running [Axalta] efficiently and selling the business for cash rather than doing a tax-free spin," Trian claimed, DuPont had squandered $5 billion in stockholder value.

57. Hoping to ward off Trian, DuPont planned a $5 billion stock buyback. To fund the repurchase, DuPont decided to move forward quickly with the spin-off of its Performance Chemicals division. DuPont planned to use the spin-off both to shed environmental liabilities and to finance its own stock buyback to fend off Trian. In October 2013, when it announced the planned spin-off, DuPont also determined that the "spinco" thereafter would pay DuPont a dividend of at least $3.3 billion. The spinco would take on billions of dollars in debt to fund that massive dividend.

58. Undeterred, Trian launched a proxy contest in January 2015, threatening the incumbency of four directors on DuPont's 12-member board and placing DuPont's management under harsh scrutiny. From day one of the proxy contest, a central plank of Trian's campaign was that DuPont's board was "not willing to hold management accountable for continuing underperformance and repeated failures to deliver promised revenue and earnings targets." Trian assailed what it described as management's "information advantage" over the DuPont board and accused management of "speaking in half-truths." Trian also complained that DuPont had a record of paying "above-target compensation for poor results, continued earnings misses and an obfuscation of performance."

59. In response to these attacks by Trian, DuPont's management announced that the spinco's dividend back to DuPont would be even higher, about $4 billion.

DuPont also announced that substantially all of the dividend would be paid to DuPont stockholders through stock repurchases over the following 18 months. DuPont planned to transfer $375 million in costs to Chemours, allowing DuPont to claim $1 billion in run-rate savings as part of its pitch against Trian. The transaction would push the spinco's debt into a junk credit rating.

2. Chemours's Incoming Management Expresses Concerns About The Viability Of The Standalone Company

60. DuPont was able to ward off Trian's advances, but it was only able to do so by saddling Chemours with an untenable level of liabilities in both the near- and long-term. Indeed, incoming Chemours management, ***including Defendants Vergnano and Newman***, had grave concerns about the Company's planned capital structure, expressing doubts about (a) the Company having sufficient cash to operate ***on day one*** and (b) the environmental liabilities inherited from DuPont being much more serious than DuPont was representing.

61. For instance, leading up to the Spin-Off, Chemours's current management repeatedly expressed its concerns about its liquidity position as a stand-alone company:

- Before a meeting with DuPont's senior management in June 2015, Chemours's then-CFO—***Defendant Newman***—sent an email pleading that he needed an additional ***$200-300 million*** in cash reserves for Chemours to ***function on day one***. DuPont summarily rejected this plea.

- When Chemours's management complained about the lack of cash reserves, DuPont responded that Chemours could draw on its $1 billion cash revolver. Such borrowing, however, was not an option because it would cause Chemours to violate its debt covenants.

- When Chemours expressed concerns about the cash effect of paying a quarterly dividend to stockholders totaling approximately $100 million, DuPont ignored these worries and declared the Chemours dividend for the last quarter before the Spin-Off.

- When Chemours's CEO—***Defendant Vergnano***—was invited to a meeting at which DuPont's board of directors considered the appropriateness of Chemours's strained capital structure, he was instructed to answer questions posed by the board and not to volunteer his opinion.

62. Moreover, Chemours's management ***knew*** that DuPont's quantification of the liabilities that it would assign were understated.

63. Before the Spin-Off could be consummated, DuPont's board of directors needed to determine that the new company would be solvent and viable. DuPont's management thus conditioned the Spin-Off on "the receipt of an opinion from an independent appraisal firm to [DuPont's] Board confirming the solvency of each of DuPont and Chemours after the" Spin-Off. DuPont's management commissioned Houlihan Lokey to prepare this opinion.

64. Houlihan Lokey's analysis required it to quantify the potentially catastrophic environmental liabilities that DuPont was piling into Chemours. But rather than seeking a fair and independent evaluation of the amount of those liabilities, DuPont arranged for Houlihan Lokey to predicate its analysis and opinion

on numbers DuPont supplied as the “High End (Maximum) Realistic Exposure” for each of the liabilities.

65. Chemours’s personnel participated in the preparation of these numbers, and they knew that the “High End (Maximum) Realistic Exposure” figures were detached from reality. For instance, in itemizing environmental contingent remediation liabilities at various sites, DuPont instructed its employees, including those who would subsequently work at Chemours, to proceed from figures used to prepare DuPont’s accounting reserves.

66. This approach ***necessarily understated*** the actual maximum liabilities, since accounting reserves only include liabilities that are both probable and estimable. Excluded from accounting reserves—and therefore excluded from DuPont’s “maximum” exposure certifications—were two critical components of any “High End (Maximum) Realistic Exposures.” First, these accounting reserves included only liabilities and amounts that were viewed as “probable” as of December 31, 2014 and completely excluded amounts that were “possible” from the supposed liability “maximums,” no matter how vast the potential liability was. Second, the accounting reserves also excluded liabilities that were regarded as probable at the time, but for which DuPont had not yet made an estimate.

67. The Chemours personnel that were consulted in this process understood they were simply to use the numbers that had been developed for ordinary accounting purposes—in effect, a "cut-and-paste" exercise that by definition excluded consideration of risks that clearly existed but were not yet viewed as meeting the "probable and estimable" limitation of the accounting rule.

68. Accordingly, when DuPont approached Chemours's then-CFO, Defendant Newman, in May 2015 to certify the accuracy of a list of ostensible "High End (Maximum) Realistic Exposure" numbers for 87 separate categories of transferred liabilities, Newman refused. Rather, he only agreed to sign a revised certification that made clear that the maximum liability numbers came from DuPont and that he was relying on DuPont for their accuracy.

3. DuPont Effectuates The Spin-Off

69. On June 5, 2015, DuPont announced that its board of directors approved the Spin-Off of Chemours. On July 1, 2015, the Spin-Off took effect.

70. The Separation Agreement governing the Spin-Off granted Chemours less than 20% of DuPont's business lines while requiring it to assume a disproportionate percentage of DuPont's liabilities.

71. Such assumed liabilities included: (a) liability for 90% of DuPont's pending litigation by volume of cases, including growing numbers of PFOA-related

litigation across the country; (b) 67% of DuPont's environmental liabilities covering over 80 sites, the great majority of which were not sites that Chemours would operate following the Spin-Off, including at least 35 sites that DuPont never owned and many more that were inoperative; (c) assuming $4 billion in debt, with Chemours being required to use the proceeds to fund a $3.91 billion dividend back to DuPont; and (d) liabilities entirely divorced from Chemours's business, such as the benzene liabilities that DuPont had tried and failed to convey to Carlyle in the earlier sale of its Performance Coatings business.

72. As the Company admitted in the DuPont Complaint, Chemours's resulting capital structure made it a distant outlier among spin-offs. On day one, the Company had a debt-to-EBITDA ratio of 7.3x and net debt composing a stunning 76.1% of its total enterprise value. Chemours acknowledged that these are remarkably high ratios. According to the Company, of 59 recent spin-offs with enterprise values in excess of $500 million and with publicly available leverage ratios (excluding a handful of non-comparable mortgage REITs), the average debt-to-EBITDA leverage ratio of these spincos was 2.5 and the average net debt composed only 25.4% of total enterprise value. Only one of these spincos—Quorum Health Corp., which filed for Chapter 11 bankruptcy protection on April 7, 2020—had worse leverage.

73. The Separation Agreement mandated that Chemours defend and indemnify DuPont against any liability "relating to, arising out of, by reason of or otherwise in connection with" the liabilities that DuPont had assigned to Chemours ***without limitation***. Chemours was further foreclosed from seeking any recourse from DuPont with respect to any of those liabilities.

74. In other words, if any regulator or civil plaintiff sought to hold DuPont accountable for any of these liabilities, DuPont could claim that Chemours was ***entirely*** responsible for defending DuPont, paying the defense costs, and indemnifying DuPont for any resulting liability.

75. As discussed *infra* in Section III.D.2, by assuming these uncapped liabilities under the Separation Agreement, Chemours was insolvent ***at the time of the Spin-Off***, a fact that Chemours has recently ***admitted***.

C. Despite Publicly Insisting Otherwise, Chemours Has Been Insolvent Since The Time Of The Spin-Off

1. Chemours Faces Severe Issues Immediately Following The Spin-Off

76. Shortly after the Spin-Off, the Company was forced to, among other things, lay off 1,000 employees, close plants, sell business lines, and conduct two corporate restructurings. These acts were taken to avert the inevitable liquidity crisis

that arose from the Spin-Off. Within a month of the Spin-Off, Chemours's stock price fell from $21.00 per share to $11.40 per share, a 46% decline.

77. In November 2015, Chemours announced that it would sell its aniline facility in Beaumont, Texas to Dow for approximately $140 million in cash. At the time the sale was announced, Dow was just weeks away from entering a merger agreement with DuPont. The Beaumont sale thus effectively returned to DuPont an asset that it had just spun off.

78. On January 25, 2016, Chemours's stock price plummeted to $3.06 per share, an 85% decline from the price at which the Company was spun off. In February 2016, in order to increase liquidity, Chemours persuaded DuPont to advance $190 million for goods and services to be provided to DuPont through mid-2017.

2. Chemours Assures The Market That It Has A Plan To Strengthen Its Balance Sheet And Has Its Environmental Liabilities Under Control

79. Faced with significant headwinds and mounting market concerns about Chemours's viability, the Company sought to reassure investors that it was solvent and that its inherited liabilities were limited and under control. To do so, Chemours unveiled what it called a "Five-Point Transformation Plan" that would purportedly

"transform" the Company's distressed balance sheet by, in Vergnano's words, "getting the company de-levered as quickly as possible.".

80. As discussed above, Chemours had an astronomically high debt-to-EBITDA ratio at the time of the Spin-Off. However, Chemours maintained that, as a result of the Five-Point Transformation Plan, the Company would "reduce [its] net debt to EBITDA leverage ratio to approximately 3x" and emerge with a strengthened balance sheet.

81. Importantly, Chemours could not reduce its net leverage ratio if its environmental liabilities massively outweighed its assets. Large accruals for such liabilities would dramatically reduce the Company's EBITDA, thereby increasing Chemours's net leverage ratio by a substantial amount.

82. The Individual Defendants repeatedly reassured investors that Chemours's management team were fully aware of the extent of their inherited environmental liabilities. For example, during an earnings conference call held on August 6, 2015, Defendant Newman stated:

> It is important to understand that these [liabilities] are well-understood, and the current team has been monitoring these liabilities for many years.

83. Moreover, the Individual Defendants reassured investors by reporting precise potential maximum ranges of losses that could occur in excess of the amounts

Chemours had accrued. For example, in Chemours's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2015, the Company reported that it accrued $302 million for environmental remediation and stated that "the potential liability may range up to approximately $650 million above the amount accrued[.]" During the related earnings call, one analyst asked, "[W]hat's the probability your crude environmental liability increases by your stated [maximum] risk of $650 million?" In response, Vergnano claimed that because the liabilities were "very well characterized, very well documented sites," and "we don't see anything that's going to be a surprise," the risk of an additional $650 million was unlikely to materialize.

84. [redacted]

3. Chemours Proclaims That The Five-Point Transformation Plan Had Been Successful And Announces The Share Repurchase Programs As Environmental Liabilities Pile Up

85. Chemours thereafter repeatedly proclaimed that the Five-Point Transformation Plan has "worked," such that Chemours's initial struggles as an independent company were behind it and any possibility of its inherited liabilities

being larger than expected was now "deemed remote." To buttress this sentiment, the Company announced two substantial stock repurchase programs and increased its quarterly cash dividend over five-fold (and later over seven-fold).

86. Over this same time period (and unbeknownst to Chemours stockholders), however, evidence was mounting that Chemours's inherited environmental liabilities would greatly exceed DuPont's "High End (Maximum) Realistic Exposures" and a dispute was brewing with DuPont over the indemnification obligations under the Separation Agreement.

a. <u>The PFOA Litigation Is "Resolved," Making Inescapable Chemours's Inability to Manage Its Contingent Liabilities</u>

87. In connection with the Spin-Off, DuPont had certified that the "High End (Maximum) Realistic Exposure" for the Ohio MDL was $128 million, including defense costs. Chemours, however, realized that this $128 million "maximum" would quickly and substantially be exceeded.

88. As previously discussed, the Ohio MDL consolidated the claims of approximately 3,550 people against DuPont for six different types of injuries and health conditions arising from DuPont's discharges of over one million pounds of PFOA from its Washington Works facility in Parkersburg, West Virginia into the Ohio River between 1951 and 2003.

89. In mid-2016, DuPont lost the first three bellwether cases in the Ohio MDL, resulting in aggregate damages of $19.7 million. Indeed, contrary to a prior estimate for DuPont that it would win 68% of the PFOA trials, DuPont lost ***every*** trial.

90. In an effort to cap its exposure, Chemours notified DuPont that any indemnification under the Separation Agreement with respect to the Ohio MDL was capped at the $128 million "maximum" DuPont had used to justify the Spin-Off.

91. In a July 2016 response, DuPont asserted that the $128 million figure "represented only estimates based on the best judgment of management and its advisors given the available information at the time," but it had no legal effect on Chemours's indemnification obligations under the Separation Agreement. Indeed, DuPont asserted that Chemours was "contractually obligated to indemnify DuPont for any and all Indemnifiable Losses . . . including without limitation any and all judgments."

92. This dispute came to a head in early February 2017, when the parties to the Ohio MDL executed a term sheet that provided for settlement of the cases for ***$670.7 million***, split evenly between DuPont and Chemours. DuPont also agreed to pay up to an additional $125 million toward PFOA-related costs (including litigation defense). Critically, however, DuPont made clear that this Ohio MDL settlement

was the extent of its willingness to contribute anything more toward the liabilities it had fully assigned to Chemours under the Separation Agreement.

93. Thus, the Ohio MDL settlement amount was five times greater than DuPont's "maximum" that it had certified 19 months before, and DuPont was leaving further exposure to Chemours alone.

b. Chemours Assures The Market That Its Issues Are Behind It But More Environmental Liabilities Emerge

94. On February 16, 2017, the Company announced that the Ohio MDL settlement represented the full materialization of its PFOA liability exposure, such that it was now a "known" liability. Defendant Vergnano further stated that the "big overhang" from the PFOA liability was "really behind us now."

95. Thereafter, on a May 2, 2017 earnings call, Defendant Vergnano announced "we've achieved our target net leverage [ratio] of at or below 3x, a key commitment we made in announcing the transformation plan in August of 2015." Chemours later touted to investors that, as a result of reaching this milestone, the Company had achieved a "strong balance sheet" and an "improvement in our credit profile" that was so significant it was "recognized in [a] ratings upgrade from Moody's."

96. A November 6, 2017 Barclays report commented that "Chemours has healed tremendously from its spin-out of DuPont in 2015 when some questioned it as a going concern."

97. By this point in time, however, Chemours was aware of a number of potential environmental liabilities that threatened its viability should it have to honor its indemnification obligations under the Separation Agreement.

(1) *New Jersey*

98. On December 12, 2016, a local New Jersey municipality, Carneys Point, sued DuPont and Chemours for over ***$1.1 billion*** for remediation costs of the Chambers Works site. Chambers Works produced approximately 1,200 toxic chemicals, including PFOA, and has allegedly released 107 million pounds of hazardous waste into the surrounding soil, air, and drinking water wells.

99. Upon the Spin-Off, DuPont was required to comply with New Jersey's Industrial Site Recovery Act ("ISRA"). The ISRA requires owners of industrial sites to either remediate environmental damage prior to a transfer of ownership, or immediately post a bond for the cost of the remediation as computed by a state-approved software program called RACER. RACER computed this figure to be in excess of $1.1 billion.

100. The Chambers Works suit named Chemours's Sheryl Telford as a defendant. Telford had formerly served as the Director of Remediation at DuPont; upon the Spin-Off, she took the same position at Chemours and still holds that position at Chemours today. She was a primary liaison with the New Jersey Department of Environmental Protection ("NJDEP") in connection with Chambers Works and its compliance with ISRA, and the suit alleges that Telford knowingly withheld information from NJDEP—including "that the cleanup of Chambers Works would cost over $1 billion." Only after Carneys Point separately hired an independent environmental consultant did it learn of the true $1.1 billion price tag for remediation of Chamber Works, which prompted its lawsuit against Chemours and DuPont.

101. [redacted]

102. At the time of the Spin-Off, DuPont's "High End (Maximum) Realistic Exposure" for ***all*** of New Jersey environmental liabilities was ***$337 million***. This amount undershot Chemours's liability for ***one*** site alone in New Jersey by over

225%. In total, Chemours inherited four sites in New Jersey from DuPont, two of which (Chambers Works and Pompton Lakes Works) were especially toxic sites of environmental pollution.

103. Pompton Lakes Works is a former munitions facility where DuPont dumped untreated cleaning solutions into a waterway that became known as "Acid Brook." In 2018, New Jersey Governor Phil Murphy compared Acid Brook to Love Canal, the notorious site that forced Congress to set up the "Superfund" comprehensive federal program to clean up the nation's most contaminated sites.

(2) *Fayetteville Works*

104. Beginning in September 2017, the State of North Carolina, public water authorities, well owners, and a consolidated putative class of North Carolina residents, among others, filed suit against Chemours and/or DuPont relating to the Fayetteville Works. For over three decades, DuPont knew that the Fayetteville Works site had been discharging PFAS into the Cape Fear River, which serves as the source of drinking water for tens of thousands of people.

105. At the time of the Spin-Off, Dupont's "maximum" liability allocation for Fayetteville Works was ***$2.09 million***.

106. As previously discussed, the EPA had issued the Consent Order requiring DuPont to recover, destroy, or recycle GenX at a 99% rate from all effluent

process streams and air emissions. Fayetteville Works, however, had been dumping GenX into the Cape Fear River for over 30 years. A DuPont-commissioned "Blue Ribbon Panel" later found that it would cost at ***least $60 million*** just to stop ***future*** PFAS emissions from Fayetteville Works, a figure that does not include the meaningful costs needed to clean up Fayetteville Works's ***historical*** PFAS contamination.

107. The Blue Ribbon Panel also recommended a ***$20 million*** investment that it believed would reduce discharges by 70%. DuPont, however, elected to install a $2.3 million gas permeator system that effectively eliminated one waste stream responsible for certain fluorinated compounds and thereafter decided to terminate the rest of the project in late 2013. Senior Chemours's management, including Defendant Vergnano, knew that the inherited Fayetteville Works liability would far exceed $2.09 million.

108. Chemours's management at the time of the Spin-Off comprised executives directly in charge of DuPont's Performance Chemicals division (including Fayetteville Works). From October 2009 until the July 2015 Spin-Off, Vergnano ran the Performance Chemicals division at DuPont, making decisions about Performance Chemicals' business lines. Vergnano knew during his long tenure both of Fayetteville Works's PFAS emissions and of the Blue Ribbon Panel

convened in 2010. As DuPont's Chief Operating and Engineering Officer Daryl Roberts testified at the September 10, 2019 House Sub-Committee hearing on PFAS, it was "very difficult" for Chemours (and Vergnano) to deny its (and his) knowledge about the true magnitude of the Fayetteville Works liability:

> What I would say, when we hear the statement that Chemours then later found out [about the extent of the Fayetteville Works liability], is that . . . the individuals that ran this business related to the sites that were fully aware of the financials of the business, fully aware of the liabilities and profits and understood what [Chemours] was taking with it, are ***the same individuals that sit and run Chemours today . . . . When the head of the [Performance Chemicals] business is now the CEO [of Chemours], it's clear that there's ownership. And an individual who was part of those discussions, who the scientists work for and is currently running Chemours, it makes it very difficult to say we don't know anything about it before 2015.***

109. In his written response to questions for the record following the congressional hearing, Roberts stated that it was Telford, the former Director of Remediation at DuPont who took the same position at Chemours after the Spin-Off, who engineered the "inexcusable" $2.09 million estimate of remediation costs for Fayetteville Works. Specifically, Roberts stated that "Chemours's own employee," who "was quite familiar with environmental conditions at the locations that were transferred to Chemours . . . estimated a range between $507,000 and $2.09 million

related to contingent environmental remediation liabilities, for which reserves were established."

(3) *PFOA Litigation*

110. Despite Vergnano's proclamation that the "big overhang" from the Ohio MDL was "really behind us now," the PFOA litigation was far from over.

111. The settlement of the Ohio MDL resolved only about 3,550 of the cases premised on exposure to PFOA-contamination from Washington Works. The resolved cases were restricted to those who suffered from one of the six conditions identified by the science panel. It left unresolved others potential claims, such as those from severe birth defects or other cancers caused by PFOA exposure and from individuals who had been diagnosed with their condition after February 11, 2017.

112. Indeed, the number of personal injury cases against Chemours arising from PFOA exposure increased tenfold from the third quarter of 2017 to the third quarter of 2018 and continued to increase through August 2019. Most, if not all, of these cases were consolidated before the same judge as the Ohio MDL. Some individual cases sought up to $120 million in damages, and, on March 3, 2020, one of these cases resulted in a $50 million verdict against DuPont and Chemours.

c. <u>Chemours Announces The Share Repurchase Programs And Increases Its Quarterly Cash Dividend In The Face Of Ever-Growing Liabilities</u>

(1) [redacted]

113. [redacted]

114. [redacted]

115. [redacted]

[redacted]

116. [redacted]

- [redacted]
- [redacted]

117. [redacted]

[redacted]

118. [redacted]

(2) *2017: The Board Authorizes A Share Repurchase Program And Increases Dividends* [redacted]

119. [redacted] Nevertheless, the Board ***twice*** approved the Share Repurchase Programs and ***twice*** increased the quarterly cash dividend.

120. [redacted]

[redacted]

121. [redacted]

122. [redacted] the Director Defendants soon learned (to the extent that they were not aware previously) that Fayetteville Works had been dumping GenX into the Cape Fear River for decades.

123. On June 7, 2017, the Wilmington, North Carolina, newspaper, *StarNews*, published an exposé on Fayetteville Works that cited scientific studies that had found significant discharges of GenX in the Cape Fear River.

124. As a result of growing media and regulatory scrutiny following the exposé, the Company's executives attended a closed-door meeting on June 15, 2017, to discuss the issue with the North Carolina Department of Environmental Quality ("NC DEQ"). One member of the press was allowed to attend. During the meeting,

these executives admitted that Chemours (and DuPont's Performance Chemicals division before the Spin-Off) had known about the discharge of GenX into the Cape Fear River for decades.

125. [redacted]

126. [redacted]

127. [redacted]

128. [redacted]

129. In September 2017, the North Carolina Attorney General and NC DEQ filed a lawsuit in North Carolina state court seeking injunctive relief with respect to the continued operation of Fayetteville Works and abatement and site corrections. (CHEM_HIALEAH_220_00010953.) [redacted]

130. [redacted]

[redacted]

131. [redacted] the Board met on November 30, 2017. At that meeting, the Board: (a) approved a share repurchase program authorizing the purchase of shares up to $500 million (the "2017 Share Repurchase Program") and (b) declared a first quarter 2018 dividend of $0.17 per share, representing more than five times the Company's previous quarterly dividend and translating into about $125 million per year to stockholders. (CHEM_HIALEAH_220_00011340.) [redacted]

132. [redacted]

133. [redacted]

134. The next day, on December 1, 2017, the Company held an investor call during which it announced the 2017 Share Repurchase Program and the increased dividend. Vergnano proclaimed that the "transformation plan powered tremendous financial improvement in both our earnings and on our balance sheet," and as a result, the Company could "officially declare that our plan is complete and Chemours has been transformed."

135. During that call, Defendant Newman said that the Company believed that stock repurchases and quarterly cash dividends "represent[] a significant portion of the free cash flow we expect to generate. Importantly, it also provides us with balance and discipline as we consider our best uses of our cash."

136. Wall Street analysts celebrated these measures. A December 4, 2017 UBS report stated that Chemours had a "[s]olid victory lap after recovering from initially challenging spin-off from DuPont." In December 2017, Chemours repurchased nearly $116.5 million of its shares.

(3) *2018: The Board Authorizes Another Share Repurchase Program and Further Increases Dividends* [redacted]

137. Like the prior year, on January 2, 2018, [redacted]

138. That month, Chemours repurchased over $33.5 million of its shares.

139. [redacted]

140. [redacted]

141. [redacted]

142. [redacted]

143. [redacted]

[redacted]

144. [redacted] Chemours repurchased nearly $56.3 million of its shares in February 2018.

145. In March 2018, Chemours repurchased over $155 million of its shares.

146. In April 2018, Chemours repurchased nearly $38.7 million of its shares,

147. On May 1, 2018, the Board announced a $0.17 per share cash dividend, amounting to approximately $30.25 million in dividends for that quarter. (CHEM_HIALEAH_220_00000751.) [redacted]

148. [redacted]

149. That same month, Chemours repurchased nearly $100 million of its shares, which exhausted the $500 million limit on the 2017 Share Repurchase Plan.

150. [redacted]

151. [redacted]

152. [redacted]

[redacted]

153. [redacted]

154. [redacted]

155. [redacted]

[redacted]

156. The next day, on August 1, 2018, the Board approved another share repurchase program, this time authorizing the purchase of up to $750 million in shares (the "2018 Share Repurchase Program").

157. On August 2, 2018, the Board ***increased*** the quarterly cash dividend to $0.25 per share, amounting to an over $44.2 million cash outflow. [redacted]

158. During August 2018, Chemours repurchased over $51.98 million of its shares.

159. In September 2018, Chemours repurchased nearly $84.28 million of its shares.

160. [redacted]

161. [redacted]

162. [redacted]

163. [redacted]

164. That same day, October 30, 2018, the Board announced a $0.25 per share quarterly cash dividend, amounting to an over $42.77 million cash outflow. (CHEM_HIALEAH_220_00001513.) [redacted]

165. In October 2018, Chemours repurchased over $113.4 million of its shares.

166. [redacted]

167. A November 29, 2018 Barclays report commented that Chemours had come out of what “truly was a dark period” with “the balance sheet + liabilities

cleaned up," and expressed a positive view of the stock "because the story has seen so much risk mitigated," including a net leverage reduction from "6x leverage [to] [] 1.5x today[]."

(4) *The Board Learns Of Increased Inherited Liabilities Related To Benzene*

168. In late 2018, Chemours learned of ***increased*** inherited liability relating to benzene.

169. Benzene is a chemical compound commonly used in plastics, Styrofoam, adhesives, and pesticides. Benzene's toxicity has been documented for decades. An association between benzene and leukemia was "first identified in 1897," while in 1948, the American Petroleum Institute stated a general rule that "the only absolutely safe concentration for benzene is zero." The Separation Agreement conveyed to Chemours liability for 29 benzene-related lawsuits.

170. The "High End (Maximum) Realistic Exposure" that DuPont had initially certified for benzene-related harms was $17 million. But in 2017, DuPont commissioned a more comprehensive study of the benzene liability by a consultant. DuPont shared with Chemours the results of this study in late 2018, when DuPont's advisors valued the potential maximum costs at over ***$111 million***.

(5) *2019: The Board Upsizes The Share Repurchase Program Mere Months Before Filing The DuPont Complaint*

171. On January 7, 2019, Vergnano publicly asserted that in "no way" had Chemours been "set up to fail," and that it had proved the market wrong by successfully completing a "turnaround" that was "nothing short of remarkable." That month, the Company repurchased over $106.6 million of its shares.

172. [redacted]

173. [redacted]

174. [redacted]

175. [redacted]

176. That same day—February 13, 2019—the Board (a) ***upsized*** the 2018 Share Repurchase Program to permit the purchase of shares up to $1 billion and (b) announced a $0.25 per share quarterly cash dividend, amounting to an approximately $41.76 million cash outflow.

177. [redacted]

178. On February 20, 2019, Chemours entered into a consent order with North Carolina to settle the State's claims relating to Fayetteville Works on terms

that were subject to public comment and approved as fair and appropriate by the Court.

179. Among other things, the consent order required Chemours to adopt the same abatement technology that DuPont previously declined to install and to undertake extensive remediation regarding the cumulative effects of DuPont's long-running historical emissions.

180. The cost to Chemours will be in excess of ***$200 million***—approximately ***one hundred times*** DuPont's certified "maximum" figure for the Fayetteville Works site.

181. Civil lawsuits relating to Fayetteville remain outstanding. In fact, the putative class actions have been consolidated into one large putative class action, and a North Carolina federal court has largely denied DuPont and Chemours's motion to dismiss.

182. The next month, in March 2019, New Jersey filed several lawsuits against DuPont and Chemours, warning that the costs of compensating the State for DuPont's legacy environmental liabilities across multiple sites in the State could be "staggeringly expensive," and seeking compensatory and punitive damages.

183. These New Jersey lawsuits were in addition to the Chambers Works remediation litigation, which Chemours knew could result in $1.1 billion in

damages. At the time of the Spin-Off, DuPont certified that the “maximum” Chemours could have to pay for total New Jersey environmental liabilities was $337 million, divided among different sites in the State, which DuPont revised upward in 2018 to approximately $620 million.

184. In March 2019, Chemours repurchased approximately $71.1 million of its shares.

185. On April 29, 2019, [redacted]

186. [redacted]

187. That day, the Board announced a $0.25 per share quarterly cash dividend, amounting to an over $40.99 million cash outflow. (CHEM_HIALEAH_220_00003119.) [redacted]

[redacted]

188. [redacted]

189. Less than two weeks later, Chemours filed the DuPont Complaint. [redacted]

190. In May 2019, Chemours repurchased approximately $7.92 million of its shares.

D. Chemours Admits That The Separation Agreement Provides For Its Inheritance of $2.56 Billion Of "Massive Historical Liabilities," Which Rendered It Insolvent From The Time Of The Spin-Off

191. It appears that, by the DuPont Complaint, Chemours inadvertently revealed the magnitude of the environmental litigation and associated remediation expenses. Nevertheless, in the verified DuPont Complaint and subsequent

proceedings in this Court, the Company admitted in "no uncertain terms" that, if its indemnification obligations under the Separation Agreement were to be enforced, Chemours has been insolvent for its entire existence as an independent company.

1. The Market Suspects Something Is Amiss With Chemours's Inherited Liabilities

192. In a March 19, 2019 SEC filing, DowDuPont disclosed that Corteva anticipated indemnification from Chemours of hundreds of millions of dollars.

193. Shortly after this disclosure, Chemours requested confirmation that DowDuPont's planned separations would not result in an increase in any obligations that Chemours may have under or in connection with the Separation Agreement or reduce the assets that would be available to satisfy any obligations owed to Chemours. DowDuPont declined to provide this confirmation.

194. Instead, on May 3, 2019, DowDuPont responded with certain information about the transaction and the identities of the companies that would claim the benefit of DuPont's purported rights under the indemnification provisions.

195. On May 6, 2019, Larry Robbins, CEO and Portfolio Manager of the hedge fund Glenview Capital Management, rocked the Sohn Investment Conference with an extensive analysis on the true liabilities that PFAS manufacturers faced due to increasing litigation.

196. Robbins revealed that Chemours's financial disclosures massively understated its environmental liabilities exposure, and he emphasized that PFAS manufacturers such as Chemours and DuPont knew—and concealed—for decades the fact that PFAS production facilities contaminated local drinking water and that this contamination created serious, and often fatal, health effects. Robbins added that, under the Separation Agreement, Chemours must indemnify DuPont for the liabilities created by the contamination: "[T]he liabilities are now Chemours's. Every time you see DuPont losing a suit, you should assume that that liability will stay with Chemours."

197. Robbins estimated Chemours's environmental liabilities to be around "$4 to 6 billion," an amount far exceeding the Company's reserves.

198. The Company publicly disputed Robbins's statements and sought to reassure the market about its control over the environmental litigation liabilities. It conducted a meeting to discuss PFAS exposure with SunTrust Robinson Humphrey, Inc. ("SunTrust"). During the meeting with SunTrust, the Company indicated that (a) Chemours's PFOA replacement, GenX, "is manufactured and recycled at the Fayetteville site in accordance with an EPA consent order"; (b) the Company predicted "limited litigation risk related to GenX, and believes it is adequately reserved for any potential liabilities"; and (c) Chemours was pursuing litigation

regarding the Company's separation agreement with DuPont, but that "lawsuit is unrelated to PFAS."

199. SunTrust concluded, "[g]iven the lack of specific legal claims against [Chemours] regarding PFAS and the company's proactive stance toward . . . eliminating GenX emissions from its facilities, we believe the concerns about PFAS-related liabilities are premature."

2. Chemours Files The DuPont Complaint

200. On May 13, 2019, or two days ***before*** SunTrust published its report, Chemours filed a complaint under seal in this Court, verified by Defendant Newman, against DuPont. *See The Chemours Company v. DuPont Inc.*, C.A. No. 2019-0351-SG (Del. Ch.). On June 28, 2019, the Court unsealed the DuPont Complaint.

201. In the DuPont Complaint, the Company admitted that DuPont had saddled Chemours with liabilities so massive (at least ***$2.56 billion in the aggregate***, based on Chemours's own conservative estimate) that Chemours was "insolvent" from the date of the Spin-Off. Chemours brought the lawsuit against DuPont "to hold DuPont accountable for its certified liability maximums," which, according to the Company, "have proved to be systematically and spectacularly wrong" and in violation of Delaware law.

202. In particular, Chemours asserted that DuPont had falsely certified that Chemours was solvent by providing the above-discussed "maximum" estimates of the transferred liabilities that were "undertaken in a way that can only lead to an inference of bad faith" and understated such liabilities by billions of dollars. According to Chemours, the "entire spin-off process was a sham" and DuPont deliberately "engineered a vastly understated valuation of the liabilities it would impose on Chemours to try to square the spin-off with Delaware law."

203. In the Company's sworn DuPont Complaint, Chemours admitted that, "if Chemours had unlimited responsibility for the true potential maximum liabilities, it would have been insolvent as of the time of the spin-off." Chemours's counsel confirmed this admission at a hearing on December 18, 2019, where he stated that "***in no uncertain terms***," "***as of the date of the spin, Chemours was insolvent***." Chemours's counsel did not stop there:

> THE COURT: That was my understanding, that you were saying that setting aside the excess over the estimation of the environmental liabilities, there was no cushion. Is that what you were --
>
> CHEMOURS COUNSEL: That was our position, Your Honor. ***You have that straight on***. And we have alleged that the liability maximums were undertaken to satisfy Delaware law; that they were undertaken in a way that can only lead to an inference of bad faith, because they were just manifestly evidently designed to undercount the liability hugely; and that they did, in fact, undercount the

> liability hugely, as has been demonstrated; and that, in consequence, ***the company was not solvent at the time it was spun***.

204. Chemours's counsel also explained that, unbeknownst to the market, Chemours not only privately raised the issue of DuPont's massively understated liabilities to DuPont at the time of the Spin-Off, but ***it had been doing so for the entirety of the four years since***. Specifically, Chemours's counsel stated, in response to the question of why Chemours had not filed suit against DuPont four years ago: "Chemours has been objecting to the interpretation of these estimated liability maximums [by DuPont] for four years."

205. Accordingly, the Individual Defendants [redacted] ***knew*** about the indemnification issue under the Separation Agreement during Chemours's ***entire independent existence***.

206. In total, in Chemours's own sworn pleading, the Company admitted to $2.56 billion in inherited liabilities at the time of the Spin-Off, including: (a) the Ohio MDL, which amounted to $335 million for the Company; (b) the "implausib[ly]" low $620 million estimate DuPont provided for liabilities across all four New Jersey sites; (c) the $1.1 billion cost for the remediation of Chambers Works; (d) the over $200 million for the remediation of Fayetteville Works; (e) the

$111 million for inherited benzene liability; and (f) the $194 million for inherited PFAS (including GenX) liability.

Liability	Company Conservative Estimate	
Ohio MDL	$	335,000,000
New Jersey (incl. Chambers Works)	$	1,720,000,000
Fayetteville Works	$	200,000,000
Benzene	$	111,000,000
PFAS (incl. GenX)	$	194,000,000
Total	**$**	**2,560,000,000**

207. As the Company stated in the DuPont Complaint, these figures were conservative estimates. For instance, these amounts do not include potential liability arising from litigation from victims not covered by the Ohio MDL class. Certain of these victims have brought suits demanding $120 million in damages, and in March 2020 a jury awarded $50 million in a single one of these cases. Additionally, the $200 million Fayetteville Works figure does not include potential liability arising from the pending class action (which has largely survived Chemours's and DuPont's motions to dismiss).

208. Even accepting the Company's conservative estimates, however, if the indemnification obligations in the Separation Agreement were to be enforced, Chemours does not have "surplus" and, in fact, is insolvent and has continuously been since it became an independent company. As demonstrated below, such $2.56

billion in environmental liabilities rendered Chemours insolvent from the moment of the Spin-Off:

(All dollars in millions) **Line Item**	**Q2 2015**	**Q3 2015**	**Q4 2015**	**Q1 2016**	**Q2 2016**	**Q3 2016**	**Q4 2016**	**Q1 2017**	**Q2 2017**	**Q3 2017**	**Q4 2017**
Total Assets	$ 6,685	$ 6,451	$ 6,298	$ 6,380	$ 6,221	$ 6,289	$ 6,060	$ 6,282	$ 7,052	$ 7,120	$ 7,293
Total Liabilities	$ 6,280	$ 6,361	$ 6,168	$ 6,188	$ 6,052	$ 5,908	$ 5,956	$ 5,924	$ 6,480	$ 6,315	$ 6,428
Net Assets	$ 405	$ 90	$ 130	$ 192	$ 169	$ 381	$ 104	$ 358	$ 572	$ 805	$ 865
Litigation / Remediation Accruals*	$ 316	$ 314	$ 317	$ 313	$ 309	$ 298	$ 292	$ 295	$ 293	$ 283	$ 267
Required Additional Accruals**	$ 2,244	$ 2,246	$ 2,243	$ 2,247	$ 2,251	$ 2,262	$ 2,268	$ 2,265	$ 2,267	$ 2,277	$ 2,293
Shortfall* **	**$ (1,839)**	**$ (2,156)**	**$ (2,113)**	**$ (2,055)**	**$ (2,082)**	**$ (1,881)**	**$ (2,164)**	**$ (1,907)**	**$ (1,695)**	**$ (1,472)**	**$ (1,428)**

(All dollars in millions) **Line Item**	**Q1 2018**	**Q2 2018**	**Q3 2018**	**Q4 2018**	**Q1 2019**	**Q2 2019**	**Q3 2019**	**Q4 2019**	**Q1 2020**
Total Assets	$ 7,484	$ 7,338	$ 7,512	$ 7,362	$ 7,325	$ 7,433	$ 7,456	$ 7,258	$ 6,948
Total Liabilities	$ 6,482	$ 6,313	$ 6,366	$ 6,342	$ 6,509	$ 6,604	$ 6,613	$ 6,563	$ 6,287
Net Assets	$ 1,002	$ 1,025	$ 1,146	$ 1,020	$ 816	$ 829	$ 843	$ 695	$ 661
Litigation / Remediation Accruals*	$ 270	$ 267	$ 302	$ 313	$ 313	$ 327	$ 319	$ 432	$ 420
Required Additional Accruals**	$ 2,290	$ 2,293	$ 2,258	$ 2,247	$ 2,247	$ 2,233	$ 2,241	$ 2,128	$ 2,140
Shortfall* **	**$ (1,288)**	**$ (1,268)**	**$ (1,112)**	**$ (1,227)**	**$ (1,431)**	**$ (1,404)**	**$ (1,398)**	**$ (1,433)**	**$ (1,479)**

**Excluded are the Company's immaterial accruals for asbestos liability, which was not specifically addressed as an understated category of liability in the DuPount Complaint, and the $335 million the Company accrued in connection with the settlement payout for the Ohio MDL.*

***$2.56 billion - Litigation / Remediation Accruals*

****Net Assets - Required Additional Accruals*

E. The Board Illegally Authorizes The Company To Pursue A Share Repurchase Program And Issue Dividends In Violation Of Delaware Law

209. As described above, the Individual Defendants knew that DuPont had spectacularly undershot the quantification of the liabilities assigned to Chemours and its public filings failed to correct this error, misleading the market about Chemours's solvency and artificially inflating its stock price. When this information came to light, Chemours's stock price plummeted $3.73 per share on July 2, 2019, closing at $21.17 per share and erasing more than $611 million, or nearly 15% of Chemours's market capitalization.

210. The Individual Defendants knew as of the time of the Spin-Off, or at least shortly thereafter, that the Company continuously faced insolvency if the indemnification obligations of the Separation Agreement were to be enforced.

211. Nevertheless, despite this known "bet the company" risk, the Director Defendants authorized (a) two separate stock repurchase programs (the latter of which was subsequently amended to provide authorization for even greater repurchases) and (b) the issuance of cash dividends each quarter of Chemours's independent existence, including multiple ***increases*** in dividends. In total, since the Spin-Off in July 2015, the Company has expended over $1.66 billion as part of stock repurchase programs and in cash dividends.

212. If, as the Company admitted in the DuPont Complaint, Chemours was insolvent as of the Spin-Off, then these stock repurchases violated 8 *Del C.* §§ 160 and 174, and these dividends violated 8 *Del. C.* §§ 170, 173, and 174.

213. In the alternative, even if Chemours were not definitively insolvent at the time of the stock repurchases and the dividends, the Director Defendants breached their fiduciary duties by authorizing the share repurchases and the dividends when they knew that the Company faced a serious risk of insolvency.

214. Stock repurchases and dividends are methods to convey to the market and stockholders that a company is financially sound. By both (a) authorizing the stock repurchases and issuing the dividends and (b) failing to disclose to the market Chemours's actual environmental liabilities, the Individual Defendants misled the market about the Company's viability and drained the Company of liquidity at a time when it needed it the most.

1. The Share Repurchase Programs

215. As discussed above, since the Spin-Off, the Board has approved the two Share Repurchase Programs. On November 30, 2017, the Board approved the $500 million 2017 Share Repurchase Program. By May 2018, the Company had completed the 2017 Share Repurchase Program.

216. Then, on August 1, 2018, the Board approved another share repurchase program, this time authorizing the $750 million 2018 Share Repurchase Program. On February 13, 2019, the Board upsized the 2018 Share Repurchase Program to permit the purchase of shares up to $1 billion. In total, the Company has repurchased over $1.07 billion worth of its shares:

Month	Shares Purchased	Average Price	Total
2017 Share Repurchase Program			
December-17	2,386,406	$ 48.81	$ 116,480,477
January-18	654,241	$ 51.23	$ 33,516,766
February-18	1,124,196	$ 50.06	$ 56,277,252
March-18	3,200,715	$ 48.44	$ 155,042,635
April-18	764,786	$ 50.58	$ 38,682,876
May-18	1,955,303	$ 51.14	$ 99,994,195
Total			**$ 499,994,201**
2018 Share Repurchase Program			
August-18	1,161,655	$ 44.75	$ 51,984,061
September-18	2,065,169	$ 40.81	$ 84,279,547
October-18	3,124,033	$ 36.30	$ 113,402,398
January-19	3,198,563	$ 33.33	$ 106,608,105
February-19	2,202,448	$ 37.86	$ 83,384,681
March-19	1,876,991	$ 37.86	$ 71,068,510
April-19	1,387,241	$ 38.51	$ 53,422,651
May-19	229,899	$ 34.44	$ 7,917,722
Total			**$ 572,067,675**
			$ 1,072,061,876

217. If, as the Company admitted in the DuPont Complaint, Chemours has been insolvent at every moment since the Spin-Off if the indemnification obligation under the Separation Agreement were to be enforced, then the Director Defendants

violated 8 *Del. C.* § 160 ("Section 160") by authorizing the Share Repurchase programs. Section 160 provides, in relevant part, that "no corporation shall . . . [p]urchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation." Given the size of the environmental liabilities that Chemours inherited from DuPont, if the indemnification obligations of the Separation Agreement are enforced, then Chemours's capital has continuously been impaired since the moment of the Spin-Off.

218. Moreover, whether capital is impaired by a stock purchase does not turn solely on GAAP accounting. To the contrary, before authorizing a repurchase, directors are obligated to determine whether "surplus" exists.

219. Under Delaware law, "surplus" is defined as the excess of "net assets" over "capital." "Net assets" in turn is defined as "the amount by which total assets exceeds total liabilities." Because "total liabilities" includes contingent and off-balance sheet liabilities, directors cannot determine "surplus" simply by relying on balance sheet reserves set up under GAAP. That is especially so here [redacted]

220. Any fair attempt to value contingent liabilities here would have led to only one rational conclusion: that the Company lacked "surplus" from which to authorize share repurchases at all points in time. [redacted]

221. Accordingly, by authorizing the Share Repurchase Programs, the Director Defendants violated Section 160. And 8 *Del. C.* § 174 ("Section 174") provides, in relevant part:

> In case of any willful or negligent violation of § 160 or § 173 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within 6 years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued.

222. As discussed above, the Director Defendants knew, or reasonably should have known, that Chemours was insolvent at the time of the Spin-Off or shortly thereafter. At a minimum, the Director Defendants knew, or reasonably should have known, that Chemours was insolvent at the time that the Director

Defendants authorized the Share Repurchase Programs and at the time that the Company was executing such repurchases. 8 *Del. C.* § 102(b)(7) ("Section 102(b)(7)") explicitly provides that director liability may not be eliminated or limited for violations of Section 174.

223. Even if Chemours were not technically insolvent following the Spin-Off, the Director Defendants breached their fiduciary duties by authorizing the Share Repurchase Programs when they knew that Chemours faced a serious risk of insolvency because of its indemnification obligations under the Separation Agreement[redacted]

224. Likewise, [redacted] the Director Defendants acted negligently and in bad faith by approving such programs.

225. Through the Stock Repurchase Programs, the Director Defendants signaled to the market that they believed Chemours's shares were undervalued and that the repurchases were the best use of the Company's cash. By both (a) authorizing the stock repurchases and (b) failing to disclose to the market Chemours's actual environmental liabilities, the Individual Defendants misled the

market about the Company's viability and drained the Company of liquidity at a time when it needed it the most.

226. When the truth about the Company's true environmental liabilities was fully exposed, Chemours stock price fell to approximately $14.69 per share. As a result, the 25,331,646 shares the Company repurchased between December 2017 and May 2019 for over $1 billion were only worth approximately $372 million, or only 34.71%, of what the Company paid for them.

227. In other words, the Share Repurchase Programs effectuated a value transfer to the selling Chemours stockholders, to the detriment of the remaining Chemours stockholders. And, as discussed above, the Individual Defendants did not provide material information to the market regarding the inherited environmental liabilities, so Chemours stockholders did not have necessary information when making their decisions whether to participate in the Share Repurchase Programs.

2. The Dividends

228. In addition to the Stock Repurchase Programs, the Director Defendants also authorized cash dividends each quarter of the Company's independent existence. In particular, the Company has paid nearly $585 million in dividends:

Declaration Date	Dividend Per Share	Shares Outstanding*	Total Dividends
07/29/20	$ 0.25	164218483	$ 41,054,620.75
04/28/20	$ 0.25	164,218,483	$ 41,054,620.75
02/12/20	$ 0.25	164,006,272	$ 41,001,568.00
10/30/19	$ 0.25	163,501,112	$ 40,875,278.00
07/31/19	$ 0.25	163,481,966	$ 40,870,491.50
04/30/19	$ 0.25	163,963,626	$ 40,990,906.50
02/13/19	$ 0.25	167,037,003	$ 41,759,250.75
10/30/18	$ 0.25	171,084,799	$ 42,771,199.75
08/02/18	$ 0.25	176,845,099	$ 44,211,274.75
05/01/18	$ 0.17	177,911,882	$ 30,245,019.94
11/30/17	$ 0.17	182,524,068	$ 31,029,091.56
11/07/17	$ 0.03	185,163,063	$ 5,554,891.89
08/03/17	$ 0.03	184,800,961	$ 5,544,028.83
04/28/17	$ 0.03	184,463,611	$ 5,533,908.33
02/14/17	$ 0.03	183,153,218	$ 5,494,596.54
11/03/16	$ 0.03	181,834,319	$ 5,455,029.57
08/04/16	$ 0.03	181,545,136	$ 5,446,354.08
04/28/16	$ 0.03	181,470,350	$ 5,444,110.50
02/24/15	$ 0.03	181,376,949	$ 5,441,308.47
09/02/15	$ 0.03	180,984,614	$ 5,429,538.42
07/23/15	$ 0.55	180,966,833	$ 99,531,758.15
Total Dividends			**$ 584,738,847.03**

**According to periodic reports filed immediately preceding dividend record date.*

229. If, as the Company admitted in the DuPont Complaint, Chemours has been insolvent at every moment since the Spin-Off if the indemnification obligation under the Separation Agreement were to be enforced, then the Director Defendants violated 8 *Del. C.* §§ 170 ("Section 170") and 173 ("Section 173") by authorizing these dividends. Section 170 provides, in relevant part:

> (a) The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either:
>
> (1) Out of its surplus, as defined in accordance with §§ 154 and 244 of this title; or
>
> (2) In case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

230. As discussed above, if the indemnification obligations of the Separation Agreement were to be enforced, the Company ***never*** would have had a surplus. Additionally, as demonstrated in the table below, there were years where dividends were declared that exceeded the Company's net profits in the year that the dividends were declared and/or the preceding year:

Year	Net Profits	Total Dividends	Net Profits - Dividends
2014	$ 400,000,000	$ -	$ 400,000,000
2015	$ (90,000,000)	$ 110,402,605	$ (200,402,605)
2016	$ 7,000,000	$ 16,345,494	$ (9,345,494)
2017	$ 746,000,000	$ 53,156,517	$ 692,843,483
2018	$ 995,000,000	$ 117,227,494	$ 877,772,506
2019	$ (52,000,000)	$ 164,495,927	$ (216,495,927)

231. Moreover, the existence of "surplus" necessary to declare a dividend (when the declaration is not based on net profits), does not turn solely on GAAP accounting. To the contrary, before authorizing a dividend out of "surplus" directors

are required to determine the value of off-balance sheet liabilities, including contingent liabilities, and only proceed to declare and pay a dividend from "surplus" where "net assets," including fairly valued contingent liabilities, exceeds capital by more than the amount of the dividend.

232. [redacted]

233. Any fair attempt to value the contingent liabilities here would have led to only one rational conclusion: that the Company lacked "surplus" from which to declare dividends at all points in time.

234. Section 173 provides, in relevant part, that "[n]o corporation shall pay dividends except in accordance with this chapter," and, as discussed above, Section 174 provides for director liability for willful or negligent violations of Section 173. The Director Defendants knew, or reasonably should have known, that Chemours was insolvent at the time of the Spin-Off if the indemnification obligations in the Separation Agreement were to be enforced, and that it lacked net profits out of which to issue dividends. Section 102(b)(7) explicitly provides that director liability may not be eliminated or limited for violations of Section 174.

235. Even if Chemours was not definitively insolvent following the Spin-Off, the Director Defendants breached their fiduciary duties by authorizing the dividends when they knew that Chemours faced a serious risk of insolvency because of its indemnification obligations under the Separation Agreement [redacted]

236. Likewise, since no fair valuation of contingent and off-balance sheet liabilities could justify the conclusion that "surplus" existed to support the declaration of dividends, the Director Defendants acted negligently and in bad faith by declaring and paying dividends out of "surplus" which never existed.

237. Through the issuance of the dividends, the Director Defendants signaled to the market that they believed Chemours's shares were undervalued and that the dividends were the best use of the Company's cash.

238. By both (a) issuing the dividends and (b) failing to disclose to the market Chemours's actual environmental liabilities, the Individual Defendants misled the market about the Company's viability and drained the Company of liquidity at a time when it needed it the most.

F. Insider Sales By Defendants Vergnano and Newman

239. Rather than providing the market with correct information, Defendants Vergnano and Newman used their knowledge of Chemours's material, nonpublic information to sell their personal holdings while the Company's stock was artificially inflated. As described above, both Vergnano and Newman knew that (a) Chemours would have been insolvent from day one if the indemnification obligations in the Separation Agreement were to be enforced and (b) the public was not aware of the true extent of the Company's environmental liabilities.

240. While in possession of this knowledge, Vergnano sold 200,151 shares of his personally held Chemours stock for proceeds of over $10 million. Defendant Vergnano's sales were timed to maximize profit from Chemours's then-artificially inflated stock price. Defendant Vergnano's sales are suspicious given that his stock sales represented 15.6% of his holdings.

241. While in possession of this knowledge, Newman sold 155,047 shares of his personally held Chemours stock for proceeds of over $6.8 million. Newman's sales were timed to maximize profit from Chemours's then artificially inflated stock price. Defendant Newman's sales are suspicious given that his stock sales represented 39% of his holdings.

242. A summary of Vergnano's and Newman's shares is provided below. As of May 4, 2017, *i.e.*, the first date of these insider sales, both Vergnano and Newman knew that (a) Chemours would have been insolvent from day one if the indemnification obligations in the Separation Agreement were to be enforced and (b) the public was not aware of the true extent of the Company's environmental liabilities. The market did not have this information at the times of Vergnano's and Newman's sales.

Insider	Transaction Date	Shares Sold	Price	Proceeds
Vergnano	05/08/18	144,438	$ 50.52	$ 7,297,007.76
	05/09/18	55,713	$ 50.34	$ 2,804,592.42
Total		**200,151**		**$ 10,101,600.18**
Newman	05/04/17	22,431	$ 39.82	$ 893,202.42
	05/05/17	350	$ 40.79	$ 14,276.50
	03/09/18	17,281	$ 49.24	$ 850,916.44
	03/09/18	10,600	$ 49.13	$ 520,778.00
	03/09/18	800	$ 49.05	$ 39,240.00
	03/09/18	700	$ 49.00	$ 34,300.00
	05/08/18	40,000	$ 50.00	$ 2,000,000.00
	05/08/18	3,675	$ 50.45	$ 185,403.75
	03/11/19	59,210	$ 38.26	$ 2,265,374.60
Total		**155,047**		**$ 6,803,491.71**
Grand Total		**355,198**		**$ 16,905,091.89**

243. Accordingly, Vergnano and Newman leveraged their insider, non-public information in order to personally profit by the stock sales. When the truth about the Company's true environmental liabilities was fully exposed, Chemours

stock price fell to approximately $14.69 per share. As a result, the 355,198 shares that Vergnano and Newman sold between May 4, 2017 and March 11, 2019 for nearly $17 million were only worth approximately $5.2 million, or only 30.87%, of the amount received.

IV. DERIVATIVE ALLEGATIONS

244. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress statutory violations and breaches of fiduciary duty by the Individual Defendants.

245. Plaintiff is a stockholder of Chemours, was a stockholder of the Company at the time of the wrongdoing alleged herein, and has been a stockholder of the Company continuously since that time.

246. Plaintiff will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights.

V. DEMAND FUTILITY ALLEGATIONS

247. Plaintiff did not make a demand on the Board to institute this action because pre-suit demand is excused. The facts alleged in the preceding paragraphs raise a reasonable doubt that, at a minimum, a majority of the current Board would not be disinterested and independent when considering a demand regarding (a) the

authorization of the Share Repurchase Programs or the dividends and (b) the insider stock sales by the Officer Defendants.

248. The current Board consists of Defendants Vergnano, Brown, Anastasio, Bell, Cranston, Crawford, Farrell, Keohane, and Kane. Seven of the nine current Company directors (*i.e.*, Vergnano, Brown, Anastasio, Bell, Cranston, Crawford, and Farrell) have been continuously on the Board since the Spin-Off. Accordingly, a majority of the current Board faces a substantial likelihood of liability for their misconduct in connection with the authorization of the Share Repurchase Programs and the dividends, including by:

(a) Authorizing the Share Repurchase Programs when the capital of Chemours was impaired or when such repurchases caused an impairment of the capital of the Company, in violation of Sections 160 and 174;

(b) Authorizing the Company to issue dividends when (i) Chemours did not have a surplus and (ii) the dividends exceeded the Company's net profits from the fiscal year in which the dividend was declared and/or the preceding fiscal year, in violation of Sections 170, 173 and 174;

(c) Breaching their fiduciary duties by authorizing the Share Repurchase Programs and the dividends when they knew that Chemours faced a serious risk of insolvency, thereby misleading the market about the Company's viability and draining the Company of liquidity at a time when it needed it the most; and

(d) Breaching their fiduciary duties by authorizing the Share Repurchase Programs when they knew that Chemours faced a serious risk of insolvency and that the Company had failed to disclose information relating to the Company's indemnification obligations under the Separation Agreement and the true magnitude of the inherited environmental liabilities, thereby (i) depriving Chemours's stockholders of material information needed for their investment decisions of whether to participate in the Share Repurchase Programs and (ii) funneling value out of the Company to selling Chemours stockholders to the detriment of the remaining Chemours stockholders.

249. Relatedly, Vergnano sold Chemours stock under highly suspicious circumstances. As discussed above, Vergnano knew that (a) Chemours would have been insolvent from day one if the indemnification obligations in the Separation Agreement were to be enforced and (b) the public was not aware of the true extent of the Company's environmental liabilities. Vergnano used this material, nonpublic Company information to benefit himself, in breach of his fiduciary duties, by selling Chemours stock before such information was disclosed to the market and the value of Company shares dramatically declined. The Director Defendants knew that the

market did not know this material, nonpublic information that Vergnano capitalized on when making his trades, yet they failed to inform the public about the true nature of Chemours's environmental liabilities. And Vergnano would not be independent and disinterested when considering a lawsuit against Newman based on the same allegations of misconduct as alleged against Vergnano in this Complaint.

250. In short, a demand on the Board would be futile because a majority of the Director Defendants faces a substantial likelihood of liability for both statutory violations and breaches of their fiduciary duties.

VI. CLAIMS FOR RELIEF

COUNT I

Violation of 8 *Del. C.* §§ 160, 174
(Against the Director Defendants)

251. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

252. 8 *Del. C.* § 160 provides, in relevant part:

> (a) Every corporation may purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:
>
> (1) Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of

> the corporation, except that a corporation other than a nonstock corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock, or, if no shares entitled to such a preference are outstanding, any of its own shares, if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with §§ 243 and 244 of this title.

253. 8 *Del C.* § 174(a) provides:

> In case of any willful or negligent violation of § 160 or § 173 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within 6 years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued.

254. The Director Defendants violated Section 160 by willfully or negligently authorizing the Share Repurchase Programs when the capital of Chemours was impaired or when such repurchases caused an impairment of the capital of the Company.

255. Section 102(b)(7) provides that director liability may not be eliminated or limited for violations of Section 174. Accordingly, the Director Defendants are jointly and severally liable to the Company to the full amount of the repurchases

under the Stock Repurchase Programs, with interest from the time such liability accrued.

<u>COUNT II</u>

Violation of 8 *Del. C.* §§ 170, 173, and 174
(Against the Director Defendants)

256. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

257. 8 *Del. C.* § 170 provides, in relevant part:

> (a) The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either:
>
> > (1) Out of its surplus, as defined in accordance with §§ 154 and 244 of this title; or
> >
> > (2) In case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

258. 8 *Del. C.* § 173 provides, in relevant part, that "[n]o corporation shall pay dividends except in accordance with this chapter." Moreover, 8 *Del C.* § 174(a) provides:

> In case of any willful or negligent violation of § 160 or § 173 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within 6 years after paying such unlawful dividend or after such unlawful stock purchase or

> redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued.

259. The Director Defendants violated Sections 170 and 173 by willfully or negligently authorizing the Company to issue dividends when (a) Chemours did not have a surplus and (b) the dividends exceeded the Company's net profits from the fiscal year in which the dividend was declared and/or the preceding fiscal year.

260. Section 102(b)(7) provides that director liability may not be eliminated or limited for violations of Section 174. Accordingly, the Director Defendants are jointly and severally liable to the Company to the full amount of the dividends issued when (a) Chemours did not have a surplus and (b) the dividends exceeded the Company's net profits from the fiscal year in which the dividend was declared and/or the preceding fiscal year, with interest from the time such liability accrued.

COUNT III

Breach of Fiduciary Duty
(Against the Director Defendants)

261. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

262. The Director Defendants, as directors of Chemours, are fiduciaries of the Company and its stockholders. As such, they owe the Company the utmost duties of due care, loyalty, good faith, fair dealing, honesty, and disclosure.

263. The Director Defendants have breached their fiduciary duties by authorizing the Share Repurchase Programs and the dividends when they knew that Chemours faced a serious risk of insolvency, thereby artificially inflating Chemours's stock price, misleading the market about the Company's viability, and draining the Company of liquidity at a time when it needed it the most.

264. The Director Defendants also have breached their fiduciary duties by authorizing the Share Repurchase Programs when they knew that Chemours faced a serious risk of insolvency and that the Company had failed to disclose information relating to the Company's indemnification obligations under the Separation Agreement and the true magnitude of the inherited environmental liabilities, thereby (a) depriving Chemours's stockholders of material information needed for their investment decisions of whether to participate in the Share Repurchase Programs and (b) funneling value out of the Company to selling Chemours stockholders to the detriment of the remaining Chemours stockholders.

265. As a result of such actions of the Director Defendants, the Company has been and will be damaged, and there is no adequate remedy at law.

COUNT IV

Breach of Fiduciary Duty
(Against the Officer Defendants)

266. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

267. The Officer Defendants, as officers of Chemours, are fiduciaries of the Company and its stockholders. As such, they owe the Company the utmost duties of due care, loyalty, good faith, fair dealing, honesty, and disclosure.

268. The Officer Defendants used their knowledge of Chemours's material, nonpublic information to sell their personal holdings while the Company's stock was artificially inflated. The Officer Defendants knew that (a) Chemours would have been insolvent from day one if the indemnification obligations in the Separation Agreement were to be enforced and (b) the public was not aware of the true extent of the Company's environmental liabilities. The Officer Defendants used this material, nonpublic Company information to benefit themselves, in breach of their fiduciary duties, by selling Chemours stock before such information was disclosed to the market and the value of Company shares dramatically declined.

269. As a result of such actions of the Officer Defendants, the Company has been and will be damaged, and there is no adequate remedy at law.

COUNT V

Unjust Enrichment
(Against the Officer Defendants)

270. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

271. By their wrongful acts, the Officer Defendants were unjustly enriched at the expense of and to the detriment of Chemours by using their knowledge of Chemours's material, nonpublic information to sell their personal holdings while the Company's stock was artificially inflated. The Officer Defendants knew that (a) Chemours would have been insolvent from day one if the indemnification obligations in the Separation Agreement were to be enforced and (b) the public was not aware of the true extent of the Company's environmental liabilities.

272. The Officer Defendants used this material, nonpublic Company information to unjustly enrich themselves by selling Chemours stock before such information was disclosed to the market and the value of Company shares dramatically declined. The proceeds of these stock sales were accepted by the Officer Defendants under such circumstances that it would be inequitable for them to be retained.

273. As a result of such actions of the Officer Defendants, the Company has been and will be damaged, and there is no adequate remedy at law.

274. Plaintiff, as a stockholder and representative of Chemours, seeks restitution from the Officer Defendants, and seeks an order from this Court disgorging all profits obtained by them as a result of their insider stock sales.

COUNT VI

Breach of Fiduciary Duty
(In the Alternative Against Vergnano)

275. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

276. Defendant Vergnano is both a director and CEO of Chemours and has served in such roles at all times relevant hereto.

277. In both capacities, Vergnano owes a duty of candor to his fellow directors and is duty-bound to share information he is aware of bearing on decisions the Board is called upon to make.

278. While the allegations of this Complaint allege that the Board knew of the scope and scale of the contingent liabilities assumed by the Company in the Spin-Off, in the alternative, if the Board was unaware of the size, scope, and scale of such contingent liabilities, as the former head of Performance Chemicals at DuPont, Defendant Vergnano was personally knowledgeable with respect to such liabilities, as well as their size, scope and scale.

279. To the extent that the Board was not aware of the size, scope, and scale of Chemours's inherited liabilities and did not become aware of such information, Defendant Vergnano was duty-bound to share that information with the Board when it acted to authorize the Share Repurchase Programs and dividends, and his failure to do so constitutes a breach of his fiduciary duties.

280. Defendant Vergnano's breach of fiduciary duty resulted in harm to the Company in the amount of all of the dividends paid and stock repurchased by the Company since its inception.

COUNT VII

Breach of Fiduciary Duty
(In the Alternative Against Newman)

281. Plaintiff incorporates each allegation set forth above as if fully set forth herein.

282. Defendant Newman has been Chemours's Senior Vice President since November 2014 and Chief Operating Officer since June 2019. Newman was CFO from November 2014 to June 2019.

283. As a Company officer, Newman owes a duty of candor to the Board and is duty-bound to share information he is aware of bearing on decisions the Board is called upon to make.

284. In his capacity as a Company officer, Defendant Newman attended each and every meeting of the Board at which a Stock Repurchase Program and/or dividend was discussed and announced by the Board.

285. As a former DuPont employee, Defendant Newman was familiar with the size, scope, and scale of the Company's inherited contingent liabilities. Newman also became familiar with Chemours's inherited contingent liabilities in connection with his involvement with the preparation of DuPont's solvency opinion issued in connection with the Spin-Off.

286. While the allegations of this Complaint allege that the Board knew of the size, scope, and scale of the contingent liabilities assumed by the Company in the Spin-Off and wrongfully failed to value such liabilities, in the alternative, if the Board was unaware of the size, scope, and scale of such contingent liabilities, as an officer of the Company who attended all relevant Board meetings, Defendant Newman had an obligation to share with the Board the information he knew about the size, scope, and scale of the Company's inherited liabilities at the time that the Board acted to authorize Share Repurchase Programs and dividends.

287. Defendant Newman's failure to advise the Board as to the size, scope and scale of the Company's inherited contingent liabilities was a breach of his fiduciary duty.

288. Defendant Newman's breach of fiduciary duty resulted in harm to the Company in the amount of all of the dividends paid and stock repurchased by the Company since its inception.

PRAYER FOR RELIEF

289. WHEREFORE, Plaintiff demands judgment in its favor and against the Individual Defendants as follows:

A. Declaring that demand is excused, and Plaintiff can pursue the derivative claims alleged herein on behalf of the Company;

B. Finding the Director Defendants liable for (i) violating Sections 160, 170, 173, and 174 and (ii) breaching their fiduciary duties owed to the Company;

C. Finding the Officer Defendants (i) liable for breaching their fiduciary duties owed to the Company in their capacities as officers of the Company and (ii) were unjustly enriched at the expense of the Company;

D. In the alternative finding Defendant Vergnano liable for breaching his fiduciary duty by failing to share his personal knowledge with the Board about the size, scope, and scale of the Company's inherited contingent liabilities when the Board acted to declare dividends and authorize the Share Repurchase Programs;

E. Also in the alternative finding Defendant Newman liable for breaching his fiduciary duty as an officer by failing to share his personal knowledge with the

Board about the size, scope, and scale of the Company's inherited contingent liabilities when the Board acted in his presence to declare dividends and authorize the Share Repurchase Program;

F. Awarding damages in an amount which may be proven at trial, together with interest thereon;

G. Awarding pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;

H. Ordering an immediate disgorgement of all profits obtained by the Officer Defendants as a result of their breaches of fiduciary duty and/or unjust enrichment; and

I. Granting such other and further relief as this Court may deem just and proper.

DATED: September 16, 2020

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ *Gregory V. Varallo*
Gregory V. Varallo (Bar No. 2242)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

Counsel for Plaintiff

OF COUNSEL:

Mark Lebovitch
David L. Wales
Christopher J. Orrico
Jacqueline Y. Ma
Daniel E. Meyer
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

Robert D. Klausner
Stuart A. Kaufman
KLAUSNER KAUFMAN JENSEN & LEVINSON
7080 Northwest 4th Street
Plantation, FL 33317
(954) 916-1202