

control immediately prior to or after seeding of cool season grass (except bentgrass)” and that “it is not impacted by rain, hot temperatures or cool temperatures, and provides unprecedented levels of broadleaf weed control when applied on granular fertilizer.” As a result of these marketing efforts, by the spring of 2011 Imprelis was in common use throughout the U.S.

2. Reports of sudden and disastrous side effects quickly followed. Applications of Imprelis were followed within weeks by lethal damage to mature landscape trees, particularly Norway and Colorado spruce, white pines, and other evergreens. On June 17, 2011, Defendant began investigating reports of these symptoms, and issued a warning not to apply Imprelis where Norway Spruce or White Pine are present on, or in close proximity to, the property to be treated. According to an investigation published by the Detroit Free Press on July 11, 2011, damages from tree deaths from coast to coast are projected to be in the millions of dollars. Meanwhile, the damage to the Plaintiffs, the Michigan Class (as defined below), and the National Class (as defined below) as a result of the injury from Defendant is mounting with no end in sight, causing the EPA to investigate the possible link to Imprelis.

PARTIES

3. Plaintiff Washtenaw Acquisition, LLC (“Washtenaw”) is a Michigan limited liability company headquartered in Southfield, Michigan, with its principal place of in the State of Michigan. None of the members of Washtenaw are citizens of Delaware.

4. Plaintiff Polo Fields East, LLC (“Polo Fields”) is a Michigan limited liability company headquartered in Southfield, Michigan, with its principal place of in the State of Michigan. None of the members of Polo Fields are citizens of Delaware

5. Plaintiff The Polo Fields Golf & Country Club, LLC (“Polo Golf”) is a Michigan limited liability company headquartered in Southfield, Michigan, with its principal place of in

the State of Michigan. None of the members of Polo Golf are citizens of Delaware. Washtenaw, Polo Fields and Polo Golf are collectively referred to herein as “Plaintiffs.”

6. Defendant E. I. du Pont de Nemours and Company (“Defendant,” “DuPont,” or the “Company”) is a Delaware corporation with a principal place of business at 1007 Market Street, Wilmington, Delaware 19898.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in that plaintiffs and defendant are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

8. Venue is proper in this district in accordance with 28 U.S.C. § 1391 (a)(1) and (2) since Defendant is incorporated in and a citizen of Delaware, Defendant resides in this district pursuant to 28 U.S.C. § 1391 (c), and Defendant may be served in this district.

GENERAL AND FACTUAL ALLEGATIONS

9. Defendant is a chemical company and offers a diverse array of products for sale in the United States.

10. Defendant develops, tests, and markets chemical products to control weeds and for other purposes. According to a Company press release dated October 4, 2010, Imprelis had been tested since 2006, where “independent university researchers and contractors have conducted over 400 field trial protocols to evaluate Imprelis.™” Additionally, the Company advertised that “[s]tudies show that it is effective against many hard-to-control weeds, is not impacted by rain, hot temperatures or cool temperatures, and provides unprecedented levels of broadleaf weed control when applied on granular fertilizer.” Notably, Imprelis consumers were led to believe that “Imprelis™ is readily absorbed by plant leaves and roots, stopping the growth of target weeds by interfering with the hormonal balance necessary for normal shoot and root

development” and that Imprelis was fast acting. The Company boasted, “Herbicide symptoms typically first occur within a few hours to a few days after application. The most noticeable symptoms include the bending and twisting of stems and the cupping of leaves.”

11. As the developer of Imprelis, Defendant was obliged to undertake the testing and registration of its product. According to a Company press release dated October 4, 2010, Imprelis was registered with the EPA in October 2010.

12. In the Spring of 2011, Defendant released Imprelis to the market. In a press release dated April 12, 2011, the Company announced a new 4.5 fluid ounce package size for Imprelis, which was advertised to “provide[] turf professionals with a smaller option before upgrading to the larger package sizes of 1 gallon/28 acre and 2.5 gallon/71 acre bottles.” The Company touted the “tremendous benefits in the performance and application flexibility of Imprelis.” The press release also reiterated the Company’s earlier claim that “[s]tudies show that Imprelis™ is effective for broadleaf weed control immediately prior to or after seeding of cool season grass (except bentgrass)” and “[r]esearch also proves it is not impacted by rain, hot temperatures or cool temperatures, and provides unprecedented levels of broadleaf weed control when applied on granular fertilizer.”

13. According to Defendant’s website, Imprelis is a “post-emergent broadleaf weed control product that provides turf professionals with an innovative solution to control a wide spectrum of broadleaf weeds.” *See* DuPont Imprelis Herbicide, http://www2.dupont.com/Professional_Products/en_US/Products_and_Services/Imprelis/index.html (last visited July 13, 2011).

14. Defendant further boasts that Imprelis is “absorbed by the roots and shoots of target weeds providing consistent, reliable performance and offers application flexibility.

Research shows that DuPont™ Imprelis® herbicide is effective against the most common broadleaf weeds of turfgrass, plus many hard-to-control broadleaf weeds—making it an excellent choice for any weed management program.” *Id.*

15. Accordingly, Defendant marketed and sold Imprelis to its customers who provide lawn service applications to property owners.

16. Professional lawn care companies and other consumers of lawn care products applied Imprelis to thousands of lawns and commercial properties throughout the United States, including the properties and golf courses owned or operated by Plaintiffs.

17. Shortly after Imprelis was applied, property owners and operators began to notice yellowing and curling of needles and branches of spruce, and pine, and other evergreen trees.

18. The trees affected by Imprelis became unsightly and many died, adversely affecting the beauty and Plaintiffs’ enjoyment of their property as well as diminishing its value.

19. By June 2011 damage to trees such as Norway spruce and white pine had become widespread across several states.

20. On or around June 17, 2011, the Company issued a letter warning turf management professionals to “not apply Imprelis™ where Norway Spruce or White Pine are present on, or in close proximity to, the property to be treated.” Defendant’s website also now contains the identical precaution and a link to the warning letter. These warnings came too late for the thousands of golf courses and commercial landscapes featuring valuable, mature trees vulnerable to Imprelis’s effects.

21. Consumers of Imprelis throughout the United States paid for lawn treatments in order to protect the aesthetic appeal of their property. Instead, they suffered the loss of valuable and trees, blighting their landscapes.

22. Upon information and belief, Defendant's product has been applied to thousands, if not tens of thousands, of lawns and other properties.

23. Defendant's product has resulted in the loss of thousands, if not tens of thousands, of mature pine and spruce trees, and has injured Plaintiffs, the Michigan Class (as defined below), and the National Class (as defined below) they seek to represent.

24. Plaintiffs seek to recover amounts paid for lawn care services, the loss of trees, the injury to trees, and the injury to the aesthetics of Plaintiffs' property as a result of Defendant's actions and its product Imprelis.

CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action on behalf of a class of all other persons similarly situated in the State of Michigan.

26. Plaintiffs initially define the "Michigan Class" as follows:

All persons, consumers, entities and Third Party Payors in the State of Michigan who purchased and/or paid all or part of the purchase price of Imprelis and whose land was treated with one or more applications of Imprelis during the period October 4, 2010 through and including the date of trial ("Class Period"). Excluded from the Michigan Class is any entity in which Defendant has a controlling interest, and officers or directors of Defendant. "Third Party Payors" shall mean any entity that (1) is a party to a contract with a person, consumer, or entity who purchased and/or paid all or part of the purchase price of Imprelis during the Class Period and (2) and whose land was treated with one or more applications of Imprelis during the Class Period.

Plaintiffs, and those similarly situated as described in this paragraph, may be collectively referred to herein as the "Michigan Class Plaintiffs."

27. Plaintiffs also bring this action on behalf of themselves and all others similarly situated in the United States.

28. Plaintiffs initially define the "National Class" as follows:

All persons, consumers, entities and Third Party Payors in the United States who purchased and/or paid all or part of the purchase price of Imprelis and whose land was treated with one or more applications of Imprelis during the period October 4, 2010 through and including the date of trial (“Class Period”). Excluded from the National Class is any entity in which Defendant has a controlling interest, and officers or directors of Defendant. “Third Party Payors” shall mean any entity that (1) is a party to a contract with a person, consumer, or entity who purchased and/or paid all or part of the purchase price of Imprelis during the Class Period and (2) and whose land was treated with one or more applications of Imprelis during the Class Period.

Plaintiffs, and those similarly situated as described in this paragraph, may be collectively referred to herein as the “National Class Plaintiffs.” The Michigan Class and the National Class may be collectively referred to herein as the “Classes.”

29. This action is brought as a class action and may properly be so maintained pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b). Plaintiffs reserve the right to modify the “Michigan Class Plaintiffs” and “National Class Plaintiffs” definitions and the class period based on the results of discovery.

30. The members of the Classes are so numerous that their individual joinder is impracticable. Plaintiffs believe that there are at least thousands of members in the proposed Classes because Defendant sells Imprelis to numerous customers throughout the United States, and Imprelis has been used on the properties of these customers. Since the class members may be identified through business records regularly maintained by Defendant and its employees and agents, and through public court records, the number and identities of class members can be ascertained. Members of the Classes can be notified of the pending action by e-mail, mail, and supplemented by published notice, if necessary.

31. There are questions of law and fact which are common to the Classes, which questions predominate over any question affecting only individual Class members.

32. The principal common issues with regard to the putative National Class are: whether Defendant used deception, fraud, false pretenses, false promises, or misrepresentations through its sales, marketing, and advertising of Imprelis; whether Defendant concealed, suppressed, or omitted any material fact with intent that others rely upon such concealment, suppression or omission in connection with the sale, lease or advertisement of Imprelis; whether Defendant committed violations of the Delaware Consumer Protection Act, 6 *Del. C.* § 2511 et seq. and other similar state consumer protection statutes; and whether Defendant has been unjustly enriched by its actions.

33. The principal common issues with regard to the putative Michigan Class are: whether Defendant failed to properly test Imprelis; whether Defendant failed to properly warn of Imprelis's adverse effects; whether Defendant failed to provide proper application instructions with regard to Imprelis; whether Defendant is liable for the injury to and loss of trees as a result of Imprelis; whether Defendant is liable for environmental damage caused by Imprelis; whether Defendant is liable for the loss of aesthetics caused by Imprelis; whether Defendant properly responded to the harm caused by Imprelis; whether Defendant committed violations of MCL § 600.2919; and whether Defendant committed violations of the Michigan Consumer Protection Act, MCL § 445.901, et seq.

34. Plaintiffs' claims are typical of the claims of the members of the proposed Classes. Plaintiffs, like all members of the Classes, have sustained damages arising from Defendant's violations of the laws, as alleged herein. The claims of the Plaintiffs and the members of the Classes are based on the same legal and remedial theories deriving from the Defendant's uniform and systematic conduct.

35. Plaintiffs will fairly and adequately represent and protect the interests of all Class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. Plaintiffs are similarly situated with, and have suffered similar, if not identical, injuries as the members of the Classes whom Plaintiffs seek to represent. Plaintiffs wish to obtain redress of such wrongs. To that end, Plaintiffs have retained counsel experienced in handling class action lawsuits involving negligence, breaches of warranty, products liability and consumer protection laws. Neither the named Plaintiffs nor Plaintiffs' counsel have any interest, conflicting or otherwise. Counsel for the Classes will vigorously assert the claims of all Class members.

36. This suit may be maintained as a class action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact common to the proposed Classes predominate over the questions affecting only individual members of the Classes. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The only individual questions concern the identification of Class members and the computation of each Class member's damages, which do not predominate over common issues of fact and law. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Classes to individually redress the wrongs done to them. Even if class members themselves could afford such individual litigation, the court system could not. In addition, individualized litigation increases the delay and expenses to all parties and to the court system resulting from complex legal and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far few management difficulties. It

allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

37. The Michigan Class Plaintiffs and the National Class Plaintiffs contemplate the eventual issuance of notice to the proposed Class members setting forth the subject and nature of the instant action. Upon information and belief, Defendant's own business records and electronic media can be utilized for the contemplated notices. To the extent that any further notices may be required, the Michigan Class Plaintiffs and the National Class Plaintiffs would contemplate the use of public court records, additional media and/or mailings.

38. Plaintiffs and the members of the Classes have suffered damages as a result of the Defendant's wrongful conduct as alleged herein. Absent representative action, Plaintiffs and the members of the Classes will continue to suffer losses, thereby allowing these violations of law to proceed without remedy.

COUNT I
CONSUMER FRAUD (6 *Del. C.* 2511 et seq.)
(on behalf of the National Class and the Michigan Class)

39. Plaintiffs, on behalf of themselves and all others similarly situated, incorporate by reference all preceding paragraphs.

40. Defendant's conduct, as alleged above, is in violation of 6 *Del. C.* § 2513 and equivalent statutes in other states. Specifically, as described in more detail above, Defendant made the false pretense and misrepresentation regarding the safety of Imprelis and concealed or omitted the fact that Imprelis caused serious environmental damage to trees such as Norway Spruce or White Pine.

41. For example, Defendant advertised that “Imprelis™ allows turf professionals to control dandelion, clover and plantains plus the toughest broadleaf weeds—like ground ivy and wild violets—even during reseeding or rainy days. Its single active ingredient has one of the lowest application rates, combined with low toxicity to mammals and low environmental impact.” Defendant further advertised that “Professionals treating residential and commercial lawns, golf courses, sod farms, and sensitive areas such as schools, parks and athletic fields will benefit from this new level of performance and environmental features.” Additionally, Defendant advertised that “turf professionals have access to a new herbicide chemistry that helps them do their jobs better and faster, and also be good stewards of the environment.”

42. As described in more detail above, Defendant intended Plaintiffs and all others similarly situated to rely on its representations to purchase and use Imprelis.

43. As a direct and proximate result of Defendant’s violation of 6 *Del. C.* § 2513, Plaintiffs and all others similarly situated have suffered and will suffer injury as heretofore alleged.

COUNT II
UNJUST ENRICHMENT
(on behalf of the National Class and the Michigan Class)

44. Plaintiffs, on behalf of themselves and all others similarly situated, incorporate by reference all preceding paragraphs.

45. Defendant has been unjustly enriched by their unlawful and wrongful acts as set forth above, to the detriment of Plaintiffs and the Classes.

46. Defendant received compensation for Plaintiffs’ and the Class members’ purchases of Imprelis. In exchange for the purchase price, Plaintiffs expected to get “a new herbicide chemistry” that would, among other things, “help[] them do their jobs better and faster,

and also be good stewards of the environment.” Plaintiffs suffered injury by their use of Imprelis. Upon information and belief, Defendant is not going to pay for the injuries caused by its product and has been unjustly enriched.

47. Defendant should be divested of this unjustly gained enrichment with such damages awarded to Plaintiffs and the Classes in an amount to be proven at trial.

COUNT III
NEGLIGENCE
(on behalf of the Michigan Class)

48. Plaintiffs, on behalf of themselves and all others similarly situated, incorporate by reference all preceding paragraphs.

49. The resultant losses and damages sustained by Plaintiffs resulted directly and proximately from the negligent conduct of the Defendant, who is liable for the damages that resulted from the use of Imprelis, which Defendant developed and sold. As the developer and supplier of Imprelis, Defendant has a duty to ensure its safety, and that its intended use will not cause harm to the property on which it is applied as intended.

50. Defendant clearly intended that its product would be applied to private properties and therefore owes this duty to Plaintiffs and the Michigan Class as property owners.

51. Defendant unequivocally breached this duty by providing a product which both injured and killed valuable trees owned by Plaintiffs and the Michigan Class.

52. Defendant failed to ensure the safety of its product and also failed to provide any warning or instructions with regard to the safety of pine and spruce trees.

53. Upon application of Imprelis, Plaintiffs’ pine and spruce trees were injured and killed.

54. As a direct and proximate result of Defendant's actions, Plaintiffs and the Michigan Class have incurred damages.

COUNT IV
PRODUCT LIABILITY, MCL § 600.2945, ET SEQ.
(on behalf of the Michigan Class)

55. Plaintiffs, on behalf of themselves and all others similarly situated, incorporate by reference all preceding paragraphs.

56. Defendant produced a product, Imprelis, which directly injured property owned by Plaintiffs and the Michigan Class.

57. Defendant intended that its product would be used on property of the type owned by Plaintiffs and Michigan Class.

58. Defendant's product, when used as intended, caused injury and death to trees owned by Plaintiffs and the Michigan Class.

59. As a direct and proximate result of Defendant's product, Plaintiffs and the Class Members have incurred damages.

COUNT V
DAMAGE TO LAND, MCL § 600.2919, ET SEQ.
(on behalf of the Michigan Class)

60. Plaintiffs, on behalf of themselves and all others similarly situated, incorporate by reference all preceding paragraphs.

61. Defendant's product, Imprelis, caused death and injury to trees owned by Plaintiffs and the Class Members.

62. As a direct and proximate result of Defendant's conduct and product, Plaintiffs and the Class have incurred damages.

63. Defendant is liable to Plaintiffs and the Class, as the owners of the injured property, for three times the amount of actual damages incurred, as per MCL § 600.2919.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Michigan Class and the National Class pray for relief as follows:

- A. For an order certifying the Michigan Class and appointing Plaintiffs and their counsel to represent the Michigan Class;
- B. For an order certifying the National Class and appointing Plaintiffs and their counsel to represent the National Class;
- C. For an order awarding Plaintiffs and the Classes restitution and/or disgorgement and other equitable relief as the Court deems proper;
- D. For an order of Judgment against Defendant for Plaintiffs' and the National Class's consumer fraud/product liability claim (Count I) in whatever amount Plaintiffs and the Class are found to be entitled, plus interest, costs, reasonable attorneys' fees, and such other relief as the Court deems just and appropriate;
- E. For an order of Judgment against Defendant for Plaintiffs' and the National Class's unjust enrichment claim (Count II) in whatever amount Plaintiffs and the Class are found to be entitled, plus interest, costs, reasonable attorneys' fees, and such other relief as the Court deems just and appropriate;
- F. For an order of Judgment against Defendant for Plaintiffs' and the Michigan Class's negligence claim (Count III) in whatever amount Plaintiffs and the Class are found to be entitled, plus interest, costs, reasonable attorneys' fees, and such other relief as the Court deems just and appropriate;

- G. For an order of Judgment against Defendant for Plaintiffs' and the Michigan Class's product liability claim (Count IV) in whatever amount Plaintiffs and the Class are found to be entitled, plus interest, costs, reasonable attorneys' fees, and such other relief as the Court deems just and appropriate;
- H. For an order of Judgment against Defendant for Plaintiffs' and the Michigan Class's damage to land claim (Count V) in whatever amount Plaintiffs and the Class are found to be entitled, plus treble the amount of damages incurred, interest, costs, and reasonable attorneys' fees.
- I. For an order awarding Plaintiffs and the Classes their reasonable attorneys' fees;
- J. For costs of suit incurred herein; and
- K. For an order awarding such other and further relief as this Court may deem just and proper.

Dated: July 14, 2011

/s/ Christine S. Azar

Christine S. Azar (DE Bar ID #4170)
Charles B. Vincent (DE Bar ID #5078)
LABATON SUCHAROW LLP
300 Delaware Avenue, Suite 1225
Wilmington, DE 19801
Telephone: (302) 573-2540
Facsimile: (302) 573-2529
Email: cazar@labaton.com
Email: cvincent@labaton.com

Counsel for the Plaintiffs

OF COUNSEL:

LABATON SUCHAROW LLP

Christopher J. Keller
Hollis L. Salzman
Michael W. Stocker
Kellie C. Lerner
140 Broadway
New York, NY 10005
(212) 07-0700

THE MILLER LAW FIRM, P.C.

E. Powell Miller
Lauren G. Northrop
950 W. University Dr., Ste. 300
Rochester, MI 48307
(248) 841-2200

ZAUSMER, KAUFMAN, AUGUST,
CALDWELL & TAYLER, P.C.

Gary K. August
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111