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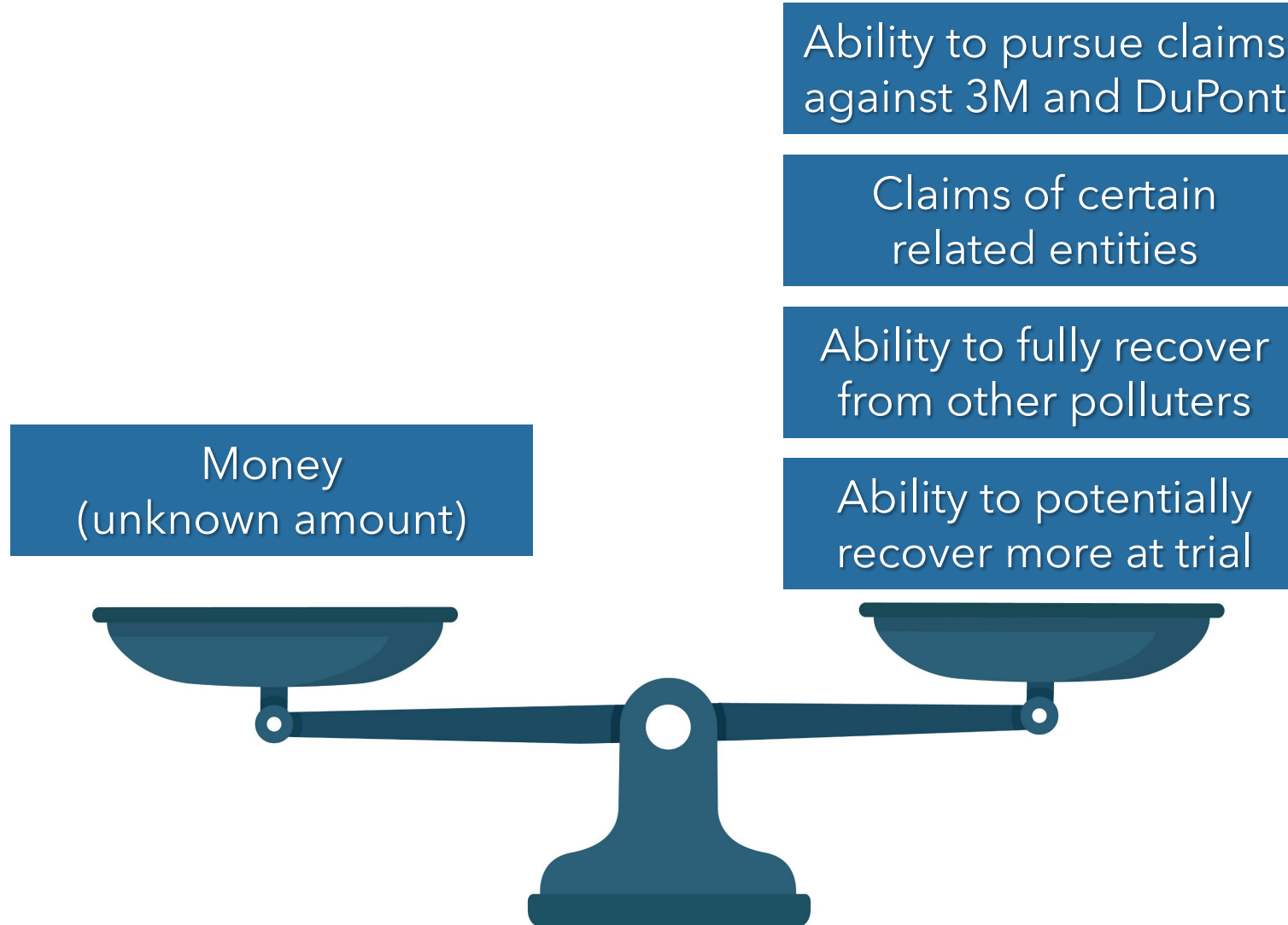
Leading the Charge

3M Company and DuPont Settlements

September 11, 2023



What You Get v. What You Give Up



Key Issues



Release



Claims-Over



Certification



Timing of payment (3M Settlement)



Adequacy of funds

Finality – What are 3M and DuPont Requiring from Settling Water Suppliers?

Scope of Release (3M Company)

- ▶ “It is the intention of this Agreement that the definitions of ‘Release’ and ‘Released Claims’ be as broad, expansive, and inclusive as possible.”
- ▶ “Released Claims” include “any Claim that may have arisen or may arise at any time in the future out of, relates to, or involves PFAS that has entered or may reasonably be expected to enter Drinking Water or any Releasing Party’s Public Water System”

MDL only included cases relating to AFFF, but settlements purport to release claims relating to all PFAS contamination of drinking water sources.

Finality – What are 3M and DuPont Requiring from Settling Water Suppliers?

Scope of Release (DuPont)

- ▶ “It is the intention of this Agreement that the definitions of ‘Release’ and ‘Released Claims’ be as broad, expansive, and inclusive as possible.”
- ▶ Any claims arising from conduct of DuPont and related entities before June 30, 2023, and PFAS in the class member’s drinking water or property;
- ▶ Any claim relating to the development, manufacture, distribution, or use of PFAS in any product, including AFFF;
- ▶ Any other claim that could have been brought in the AFFF MDL litigation.

MDL only included cases relating to AFFF, but settlements purport to release claims relating to all PFAS contamination of drinking water sources.

Finality – What are 3M and DuPont Requiring from Settling Water Suppliers?

Protection Against Claims-Over

- ▶ If a class member sues a third-party polluter for PFAS in the future and the third party blames 3M or DuPont (a “claim-over”), the class member must reduce its judgment against the polluter.
- ▶ Thus, class members’ potential recoveries from third parties would be reduced.

Provisions limit Class Members’ ability to seek judgments against third parties who seek to recover those costs from 3M or Dupont.

Finality – What are 3M and DuPont Requiring from Settling Water Suppliers?

Certification

- ▶ Claims form requires claimants to certify:
 - Claimants' authority to release all Released Claims on behalf of itself and "all other Persons who are Releasing Persons by virtue of their relationship or association with it."
 - In 3M Settlement, claimants must certify they've "consulted with any other entity that has incurred costs in connection with efforts to remove PFAS from, or prevent PFAS from entering, Settlement Class Member's Public Water System, and that Settlement Class Member's claim is on behalf of any such other entity."

Adequacy of Funds – Treatment Cost Estimates

- ▶ Estimates of nationwide PFAS treatment costs vary significantly
 - \$772 million-\$1.2 billion annualized cost (EPA estimate)¹
 - \$5.2 billion annualized cost (Black & Veatch estimate)²
- ▶ Each water provider will need to individually estimate its own costs

¹ EPA, [Economic Analysis for the Proposed Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation](#) at 5-2 (March 9, 2023)

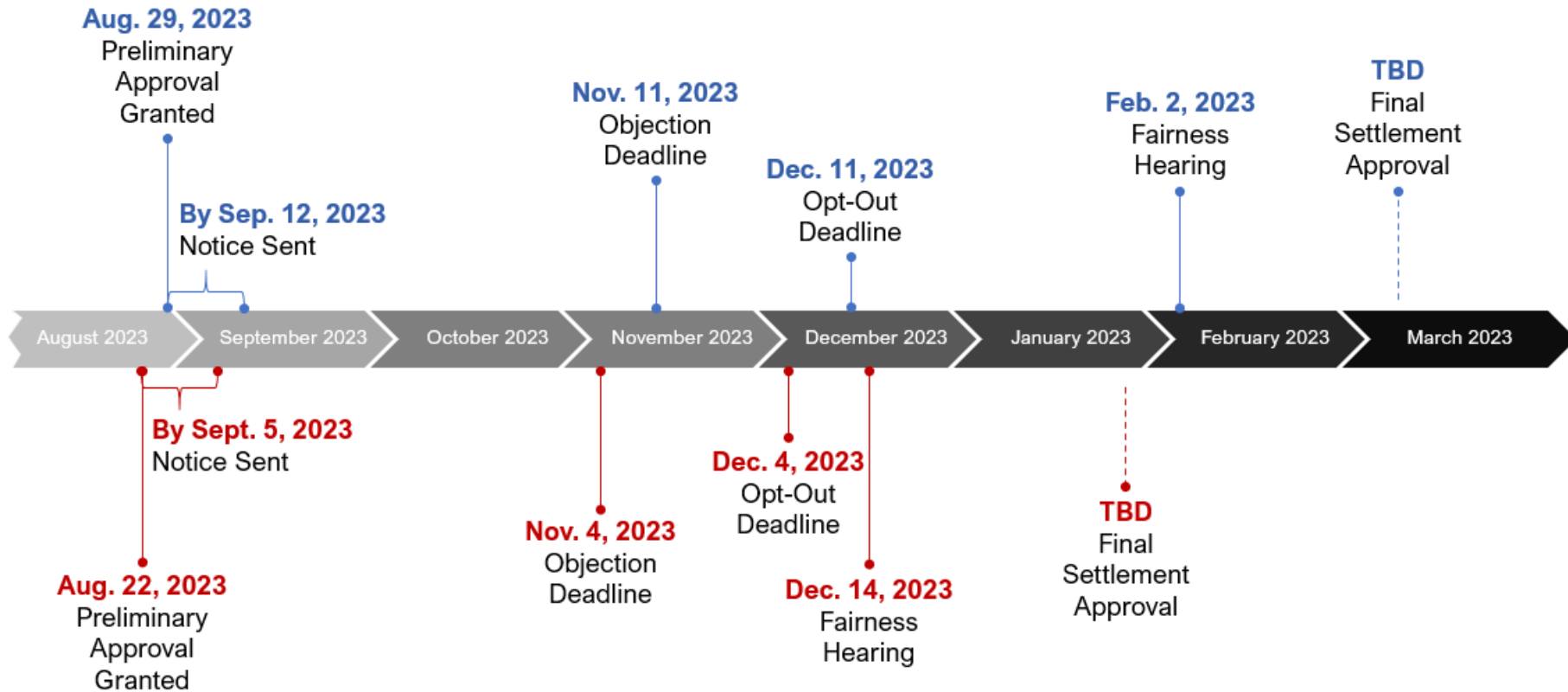
² Black & Veatch, [WITAF 56 Technical Memorandum PFAS National Cost Model Report](#) at App. A-1, prepared for AWMA (March 7, 2023)

What is the Settlement Approval Process?

- ▶ Preliminary approval and notice to proposed class **(We are here)**
- ▶ 60 days to object or 90 days for class members to object or opt out
- ▶ Court hearing
- ▶ Final approval
- ▶ Appeals, if any

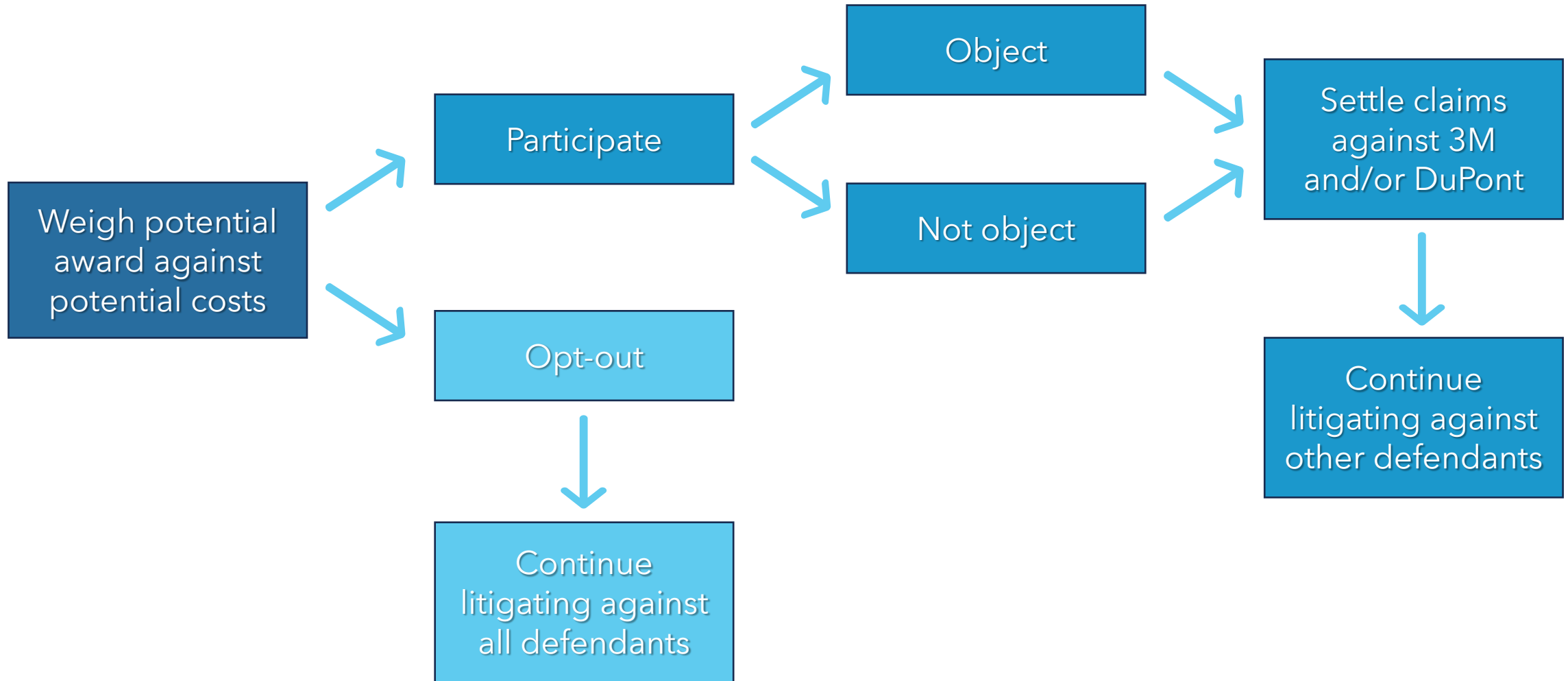
How Soon Do You Need to Decide?

3M Company's Settlement Timeline



DuPont Entities' Settlement Timeline

What Are the Next Steps for Water Providers?



Baseline Testing

- ▶ All Class Members may be required to test certain groundwater wells or surface water systems for PFAS as part of baseline testing
- ▶ Baseline testing requires:
 - Testing for at least the 29 PFAS analyses that UCMR 5 requires tested
 - Reporting of any concentration of PFAS regardless of UCMR 5's reporting levels
- ▶ Failure to test and submit Qualifying Test Results or non-detections:
 - Will disqualify the untested sources from present and future payments
 - AND PWS will be deemed to have released claims for their water sources

Timeline for Baseline Testing

3M Settlement

- ▶ If the PWS detects PFAS detections before the settlement date, June 22, 2023, it does not have to retest
- ▶ Non-detections before January 1, 2019, must retest
- ▶ Non-detections on or after January 1, 2019, do not have to retest

DuPont Settlement

- ▶ If the PWS detects PFAS before the settlement date, June 30, 2023, it does not have to retest
- ▶ Non-detections before December 27, 2021, must retest
- ▶ Non-detections on or after December 27, 2021, do not have to retest

How Much Might a Water Supplier Expect to Receive?



PFAS test results



Flow rates

Capital Costs + Operation and Maintenance Cost = Base Score

Base score is adjusted for various "bumps"

Settlement Award = (Adjusted Base Score / Sum of All Adjusted Base Scores) * (Action Fund)

(Imprecise) award estimate ranges are capable of rough calculation using spreadsheets and formula on settlement websites

Are There Other Funding Sources?

For water providers who settle with DuPont and/or 3M, where else may they look for funds to address PFAS impacts to their water systems?

- ▶ Claims against other potentially responsible parties, including other defendants in the AFFF PFAS MDL, parties who released PFAS to the environment, etc.
- ▶ Grant Funding - Federal/State
- ▶ Loans - Federal/State
- ▶ Insurance
- ▶ Rate increases for water supply customers

Who Should be Involved?

Key water supplier staff

- ▶ City Administrator/General Manager
- ▶ Public Works Director/Water Utilities Director
- ▶ Water Engineer
- ▶ Chief Financial Officer
- ▶ Board of Directors/City Council
- ▶ City Attorney

Outside technical consultants

- ▶ Environmental Consultants
- ▶ Forensic Economists/Environmental Remediation Cost Specialists
- ▶ Modelers

Legal Counsel

Why Hire a Law Firm?

- ▶ Complex settlements
- ▶ Significant dollar amounts
- ▶ Two settlements on nearly the same timeline
- ▶ Settlements are not identical
- ▶ Decisions about the settlements will have significant consequences
- ▶ Certain steps must be taken to maximize recoveries, if participating
- ▶ Other defendants remain in the AFFF PFAS MDL - continue litigation, fully capture all damages, understand scope of needs

Questions?



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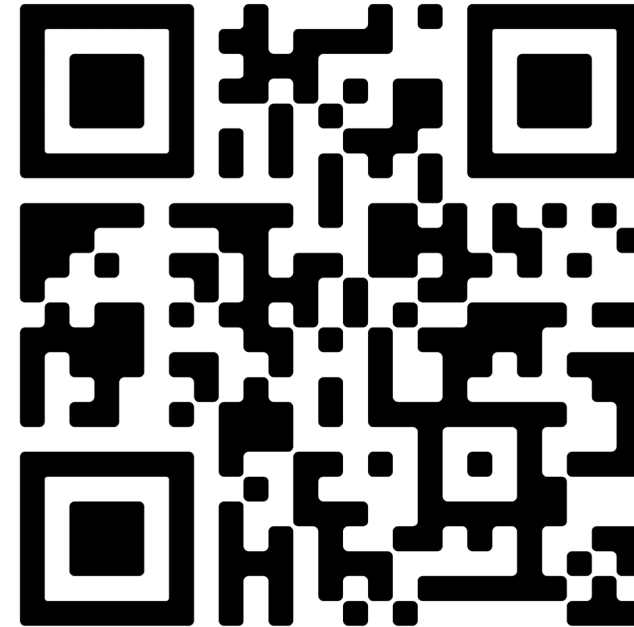
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