

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED

APR - 7 2011

CLERK OF CIRCUIT COURT # 83
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT; CITY OF)
CARLINVILLE, ILLINOIS; CITY OF FLORA, ILLINOIS;)
CITY OF FAIRFIELD, ILLINOIS; CITY OF HILLSBORO,)
ILLINOIS; AND CITY OF MATTOON, ILLINOIS;)
individually and on behalf of all others similarly)
situated,)

Plaintiffs,)

v.)

SYNGENTA CROP PROTECTION, INC., AND)
GROWMARK, INC.,)

Defendants.)

Cause No. 2004-L-710

**PLAINTIFFS' MEMORANDUM CONCERNING *IN CAMERA* REVIEW
OF SYNGENTA'S PUBLIC RELATIONS DOCUMENT**

At the March 30, 2011 hearing, Syngenta submitted a document to the Court for *in camera* review. The document is a 2005 "proposal" by the public relations firm of Jayne Thompson & Associates ("JTA") detailing the myriad ways that JTA could help Syngenta mount a publicity campaign in Illinois in response to this lawsuit. Although it was Syngenta itself that cited this document in opposition to Plaintiffs' pending motion for sanctions, it now refuses to produce the document on the grounds that JTA "is a litigation consultant for [Syngenta's] defense of this case."¹

¹ See Exhibit 1.

JTA's proposal is not privileged and the Court should order Syngenta to produce an undredacted copy to the Plaintiffs for the following three reasons:

- (1) JTA—a public relations firm hired to conduct a publicity campaign—was not retained by Syngenta “in ... preparation for trial,” and so does not qualify as a consultant entitled to protection under Rule 201(b)(3).
- (2) Even if JTA qualifies as a consultant, Rule 201(b)(3) does not protect its proposal from discovery because the proposal deals with *business strategy* in response to litigation, not “opinions” or “work product” related to *litigation strategy*.
- (3) Syngenta itself put the proposal in play when it relied on the document in its opposition to Plaintiffs' motion for sanctions. Syngenta cannot now deprive Plaintiffs of the opportunity to fully respond to Syngenta's argument by withholding the document.

BACKGROUND

From July 2010 until February 2011, Syngenta repeatedly represented to the Plaintiffs and to the Court that it retained Dr. Don Coursey as a consulting expert witness in June 2006.² Consistent with these representations, Syngenta instructed Dr. Coursey to withhold nearly a thousand documents dating back to 2006 on the basis of the consulting expert privilege.³ In February 2011, Plaintiff learned that Syngenta did not actually retain Dr. Coursey as a consulting expert until January 2009. After discovering Syngenta's deception, Plaintiffs moved for an evidentiary hearing on the issue of Dr. Coursey's retention date. Only after Plaintiffs filed this

² See generally, Plaintiffs' Motion for Sanctions, filed February 23, 2011.

³ See generally, Combined Motion to Quash Subpoena or, Alternatively, for a Protective Order, and Response to Plaintiffs' Motion for Sanctions, filed by Dr. Coursey and C. Raymond Bell on March 24, 2011 (explaining that Syngenta dictated Dr. Coursey's decision to withhold or produce documents to Plaintiffs).

motion did Syngenta instruct Dr. Coursey to release the previously withheld documents.

During oral arguments on whether an evidentiary hearing was warranted, the Court posed a direct question to Syngenta's counsel Kurt Reeg:

COURT: Well, can we establish with certainty the date that he was retained?

MR. REEG: Syngenta, Your Honor, stipulated that the retention date for purposes of this discussion is January 9, 2009.⁴

Yet when it filed its response to Plaintiffs' motion for sanctions several weeks later, Syngenta opened its brief by proclaiming once again that "Dr. Donald Coursey was retained by [Syngenta] as a consulting expert in 2006."⁵

In essence, Syngenta argued that although Dr. Coursey was hired in June 2006 through the public relations firm JTA to write and *publicize* an alarmist paper about the threat this lawsuit posed to the Illinois economy, he still qualified as a consulting expert because in June 2006, JTA was acting as "Syngenta's retained litigation consultant."⁶ This was the first time that Syngenta had tagged JTA with the "litigation consultant" label.

Hedging its bets, Syngenta implied that even if Dr. Coursey was not a consulting expert from June 2006 to January 2009, then Syngenta's representations

⁴ See Exhibit 2, excerpt from Transcript of February 23, 2011 hearing on Plaintiffs' motion for an evidentiary hearing.

⁵ See Exhibit 3, p. 1. Defendant Syngenta's Response to Plaintiffs' Motion for Sanctions.

⁶ See Exhibit 3, pp. 2-3.

to the contrary were certainly made in "good faith."⁷ JTA's purported status as a litigation consultant in June 2006, presumably, was the key fact that evinced Syngenta's lack of bad faith.

In support of its dubious assertion of JTA's litigation consultant status, Syngenta offered only two exhibits. The first was a September 2005 confidentiality agreement where Syngenta expressed its interest "in disclosing to [JTA] confidential information related to the Holiday Shores Sanitary District lawsuit."⁸ According to the agreement, the "sole purpose of the disclosures by Syngenta to [JTA] is to allow [JTA] to assist Syngenta in developing a public relations proposal relating to the lawsuit."⁹ There was no other mention of litigation.

Likely recognizing that being retained to conduct a public relations campaign *relating* to a lawsuit was a far cry from being retained as a consultant "in preparation for trial," Syngenta offered a second exhibit in support of JTA's purported litigation consultant status—the October 2005 consulting services agreement between Syngenta and JTA. That agreement mentions litigation only once, in the following context:

[Syngenta] shall pay [JTA] the sum of \$27,500.00 per month as a non-refundable retainer fee for the strategic communications services outlined in [JTA's] proposal to [Syngenta] dated October 3, 2005 and

⁷ See Exhibit 3, p. 8.

⁸ See Exhibit 3, p. 13.

⁹ *Id.*

therein captioned "Litigation Support" (page 4) and "Illinois Campaign" (page 6).¹⁰

Syngenta cited only two words from the consulting services agreement—"litigation support"—to bolster JTA's purported litigation consultant status.¹¹ Notably, Syngenta did not attach the October 3, 2005 proposal where the words "litigation support" originally appeared and where, presumably, JTA's proposed "litigation support" services were outlined in detail.

After reading Syngenta's response and learning for the first time of JTA's purported litigation consultant status, Plaintiffs noted Syngenta's failure to attach JTA's October 3, 2005 proposal as an exhibit. Its absence was particularly conspicuous given Syngenta's reliance on the two words "litigation support" quoted from that proposal in an otherwise unhelpful document that Syngenta *did* choose to attach as an exhibit.

Consequently, Plaintiffs requested that Syngenta produce the proposal itself "rather than merely a document citing a caption in that proposal."¹² Plaintiffs explained that the request was only fair given that Syngenta was now relying on JTA's litigation consultant status as of June 2006 to defend against Plaintiffs' pending motion for sanctions.¹³

¹⁰ See Exhibit 3, p. 17.

¹¹ See Exhibit 3, p. 2.

¹² See Exhibit 4.

¹³ *Id.*

In response to Plaintiffs' request, Syngenta declined to produce the October 3, 2005 proposal on the grounds that it was protected by the consultant privilege. Syngenta explained that "just as Plaintiffs have refused to divulge information regarding their consultants/consulting experts to the Defendants in this case, [Syngenta] declines to produce this October 3, 2005, document directly to you or your clients."¹⁴ In glaring contradiction to its refusal to produce JTA's *proposal*, just one week earlier Syngenta produced without hesitation the two *actual signed agreements* between Syngenta and JTA relating to the scope of JTA's retention.

Notwithstanding its highly selective assertion of the consultant privilege, Syngenta did offer to produce JTA's October 3, 2005 proposal to the Court for *in camera* review. That document is now in the Court's possession and the parties are awaiting the Court's decision on whether JTA's public relations proposal is privileged, or whether it should be produced to the Plaintiffs with or without redaction.

ARGUMENT

Rule 201(b)(3) defines a consultant as "a person who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial." The rule protects only the "identity, opinions, and work product of a consultant" from discovery. The party refusing to produce documents based on a claim of consultant privilege bears the burden of establishing that the privilege exists. *Chicago Trust Co. v. Cook County Hosp.*, 298 Ill. App. 3d 396, 401 (1st Dist.

¹⁴ See Exhibit 1.

1998). So to avoid producing the proposal, Syngenta must establish both that it retained JTA “in anticipation of litigation or preparation for trial,” and that the proposal reveals JTA’s “identity, opinions, [or] work product.”

I. JTA’s proposal is not privileged because Syngenta has not met its burden of establishing that JTA was retained “in preparation for trial.”

Syngenta’s relationship with JTA began in September 2005—over a year after this lawsuit was filed. It follows that JTA was obviously not retained “in anticipation of litigation.” So to protect JTA’s proposal from discovery, Syngenta must establish that JTA was retained in “preparation for trial.” To date, Syngenta has not met this burden.

The two documents it attached to its opposition to Plaintiffs’ motion for sanctions—the confidentiality agreement and the consulting services agreement—barely mention litigation at all. In fact, the confidentiality agreement indicates that the “sole purpose” of JTA’s engagement is to handle “public relations ... *relating to the lawsuit.*”¹⁵ Just because JTA was retained as a result of this lawsuit being filed does not mean that it was retained to advise Syngenta’s attorneys in “preparation for trial.” Indeed, it is difficult to imagine how a public relations firm could ever advise attorneys on the conduct of litigation. As Judge Reagan from the Southern District of Illinois aptly noted, documents created by public relations firms in response to litigation “pertain to business decisions, not litigation decisions.” *Burke v. Lakin Law Firm, PC*, 2008 WL 117838, *3 (S.D. Ill. Jan. 7, 2008)

¹⁵ See Exhibit 3, p. 13.

While the consulting services agreement that Syngenta also attached as an exhibit does mention "litigation support," it merely quotes that term from a caption in the proposal that is in the Court's possession.¹⁶ Plaintiffs have not seen that proposal, and so cannot comment on whether it reveals that JTA was retained in "preparation for trial." But in light of the documents that Dr. Coursey belatedly produced after Plaintiffs filed their motion for an evidentiary hearing, it is apparent that JTA merely orchestrated a public relations campaign designed to generate negative publicity toward this lawsuit—a campaign centered on creating and *publicizing* alarmist "economic studies." Plaintiffs have not seen and Syngenta has not produced any evidence indicating that JTA advised Syngenta's attorneys on litigation strategy.

In sum, Syngenta cannot sustain a claim of consultant privilege over JTA's proposal because it has not met its burden of establishing that JTA was retained in "preparation for trial."

II. JTA's proposal is not privileged because it does not contain "opinions" or "work product."

Even if Syngenta could conceivably establish that JTA was retained in "preparation for trial," JTA's proposal would still not be privileged because it was not "prepared ... in preparation for trial," and it does not contain "opinions" or "work product." Rule 201(b)(3) protects only the "identity, opinions, and work product of a consultant" from discovery. Syngenta has already revealed JTA's

¹⁶ See Exhibit 3, p. 17.

identity as a purported litigation consultant, so the only remaining bases for protecting the proposal are that it contains JTA's "opinions" or "work product" related to litigation strategy.

"Work product in Illinois is a narrow doctrine." *Midwesco-Paschen Joint Venture For Viking Projects v. Imo Indus., Inc.*, 265 Ill. App. 3d 654, 668 (1st Dist. 1994). As the Court recognized in its March 16 Order, documents that "do not reveal mental impressions, opinions or trial strategy of a party's attorney or consulting expert are ... clearly discoverable." *See also, Id.* at 667 (explaining that "the work product doctrine should be interpreted in the same manner for consulting experts as it is for attorneys"). In order to qualify for work product protection, the material must also have been "prepared ... in preparation for trial." *See* Ill. Sup. Ct. R. 201(b)(2).

Illinois courts have consistently held that just because a document comes from a consulting expert, it is not automatically protected work product. In *Midwesco-Paschen*, for example, the defendant attempted to withhold several dozen documents generated by its consulting expert in preparation for trial. *See*, 265 Ill. App. 3d at 667. The defendant made the conclusory assertion that the documents contained the consultant's opinions and analysis of the defendant's liability. *Id.* After reviewing the documents *in camera*, the court ordered them produced because they did not include the consultant's "opinions or theories" about the case, or "advice" to the defendant's lawyers. *Id.* at 668.

Similarly, in *Shields v. Burlington N. & Santa Fe Ry. Co.*, the court compelled the production of a surveillance videotape created by a defendant's consultant because it did not expose the attorney's or expert's "mental processes, opinions or other conceptual data." 353 Ill. App. 3d 506, 513 (1st Dist. 2004). The court rejected the defendant's reliance on a contrary federal decision and explained that the federal definition of work product was unsuitable because it "broadly protects all materials prepared for trial, even if the materials do not reveal any mental processes or other such conceptual data." *Id.* at 511. The Illinois Supreme Court, by contrast, "deliberately narrowed the scope of protection the work product doctrine provides." *Id.*

While Illinois courts have not had occasion to analyze whether documents generated by a public relations firm in response to litigation qualify for work product protection, numerous federal courts have concluded that they do not, even in the context of the *broader* federal definition of work product. In *Burke v. Lakin Law Firm, PC*, for example, Judge Reagan of the Southern District of Illinois compelled the production of all emails between the Lakin Firm and its public relations consultant. *See* 2008 WL 117838. The consultant was hired at the behest of the Lakin Firm's outside counsel in order to help the firm deflect negative publicity arising from the legal troubles of its founder. *Id.* at *1.

In rejecting the firm's claim of work product protection, Judge Reagan explained:

[T]he documents involved here do not involve preparation or legal strategies for conducting litigation itself, nor do they discuss how

Defendants plan to defend this or any other action. Instead, the documents discuss preparation and strategy for minimizing the public relations fallout that could result from pending litigation. And though the work product doctrine may protect documents that were prepared for one's defense in a court of law, it does not protect documents that were merely prepared for one's defense in the court of public opinion.

Id. at *3. Because “[n]one of the documents in question contemplate[d] any legal strategy,” they “pertain[ed] to business decisions, not litigation decisions.” *Id.*

Similarly, in *Calvin Klein Trademark Trust v. Wachner*, the Southern District of New York ordered the plaintiff to produce various documents generated by a public relations firm that was retained by the plaintiff's attorneys to consult the plaintiff on litigation-related publicity issues. *See* 198 F.R.D. 53, 54 (S.D.N.Y. 2000). The court explained that “it is obvious that as a general matter public relations advice, even if it bears on anticipated litigation, falls outside the ambit of protection of the so-called ‘work product’ doctrine.” *Id.* at 55. “That is because the purpose of the rule is to provide a zone of privacy for strategizing about the conduct of litigation itself, not for strategizing about the effects of the litigation on the client's customers, the media, or the public generally.” *Id.*

Finally, in *Amway Corp. v. Procter & Gamble Co.*, the Western District of Michigan imposed sanctions against a party for improperly withholding public relations documents on the basis of the work product privilege. *See* 2001 WL 1818698 (W.D. Mich. April 3, 2001). After being forced to conduct extensive *in camera* reviews of the purportedly privileged documents, the court found that: the “documents on their face reflect intense public relations activity”; “[t]he authors and recipients are generally business people, although an attorney may be included in a

long list of business recipients”; and while the documents “sometimes discuss the pending or contemplated lawsuits, ... the context of the comments is related to public relations, not legal matters.” *Id.* at *6. The court imposed sanctions, explaining that the party withheld the documents because they were “embarrassing and potentially harmful,” not because the assertion of privilege was “substantially justified.” *Id.* at *8-9.

While the Plaintiffs here have not had the opportunity to review the contents of JTA’s public relations proposal that Syngenta is withholding, it almost certainly does not qualify as “work product” under Illinois law. First, since it is merely a proposal, it was not “prepared ... in preparation for trial” as required by Rule 201(b)(2). Second, it is unlikely to contain JTA’s “mental processes, opinions or other conceptual data” related to *the conduct of the lawsuit* as required by Illinois courts. Finally, because it is at its core a public relations document, it pertains to business decisions in the court of public opinion, not litigation decisions in a court of law. In sum, even if Syngenta can establish that JTA was retained in “preparation for litigation,” the proposal is still not privileged because it does not contain the types of “opinions” and “work product” that Rule 201(b)(3) is designed to protect.

III. JTA's proposal is not privileged because Syngenta itself put the proposal in play by citing it in its opposition to Plaintiffs' motion for sanctions.

Finally, as a matter of fundamental fairness, the Court should order Syngenta to produce an unredacted copy of the proposal because Syngenta itself put the contents of that proposal in play. In its opposition to Plaintiffs' motion for sanctions, Syngenta argued for the first time that JTA was its litigation consultant in June of 2006. It did so in order to create the aura of "good faith" surrounding its decision to repeatedly represent that Dr. Coursey was retained by Syngenta as a consulting expert in June 2006—despite the fact that from 2006 to 2009 Dr. Coursey worked exclusively with JTA on creating and publicizing a paper, and had never even spoken with the attorneys representing Syngenta in this case.

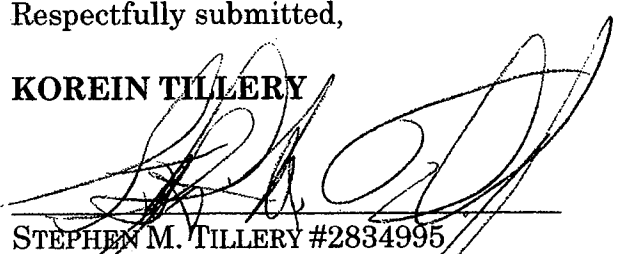
Moreover, Syngenta chose to support its dubious designation of JTA as a litigation consultant with an exhibit that did not mention litigation except to quote the phrase "litigation support" *from the very proposal Syngenta is refusing to produce*. In other words, Syngenta wanted both Plaintiffs and the Court to accept that JTA was in fact a litigation consultant in June 2006 because of a phrase that appears in a document that Syngenta chose not to disclose. If Plaintiffs are to have an opportunity to rebut Syngenta's claims of "good faith" in the misrepresentation of Dr. Coursey's retention as a consulting expert, then they must have access to the document that Syngenta relies on (albeit indirectly) to demonstrate its "good faith."

CONCLUSION

The Court should order Syngenta to immediately produce an unredacted copy of JTA's proposal to the Plaintiffs because JTA does not qualify as a litigation consultant, the proposal does not qualify as work product, and Syngenta itself made the proposal relevant to Plaintiffs' pending motion for sanctions.

Respectfully submitted,

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IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY DISTRICT; CITY OF)
CARLINVILLE, ILLINOIS; CITY OF FLORA, ILLINOIS;)
CITY OF FAIRFIELD, ILLINOIS; CITY OF HILLSBORO,)
ILLINOIS; AND CITY OF MATTOON, ILLINOIS;)
individually and on behalf of all others similarly)
situated,)

Plaintiff,)

v.)

Cause No. 2004-L-000710

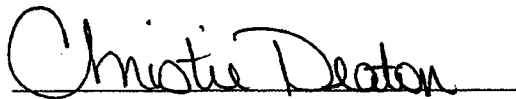
SYNGENTA CROP PROTECTION, INC., AND)
GROWMARK, INC.,)

Defendants.)

CERTIFICATE OF SERVICE

The undersigned certifies that true copies of the Plaintiffs' Memorandum Concerning *In Camera* Review of Syngenta's Public Relations Document were served upon the attorneys of record for the defendants in this cause via electronic mail and United States mail, by enclosing said copy in an envelope addressed to said attorneys at his/her address as disclosed by the pleadings on file in this cause and by depositing said envelope in a U.S. Post Office mailbox on this 7th day of April, 2011.

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EXHIBIT 1

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Attorneys and Counselors at Law

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President/Managing Partner
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ADMITTED IN MISSOURI, ILLINOIS, KANSAS & NEBRASKA

March 28, 2011

Sent Via E-mail and U.S. Mail

Mr. Stephen M. Tillery
Korein Tillery, LLC
505 North 7th Street, Suite 3600
St. Louis, MO 63101

Re: Holiday Shores Sanitary District, et al v. Syngenta Crop Protection, LLC
(SCP, LLC), et al
Case No. 04-L-000710

Dear Steve:

In response to your letter of March 25, 2011, SCP, LLC, respectfully declines your request to produce the October 3, 2005, proposal from Jayne Thompson & Associates, Ltd. (JTA). Jayne Thompson & Associates, Ltd., is a litigation consultant for SCP, LLC's defense of this case. Thus, just as Plaintiffs herein have refused to divulge information regarding their consultants/consulting experts to the Defendants in this case, SCP, LLC declines to produce this October 3, 2005, document directly to you or your clients.

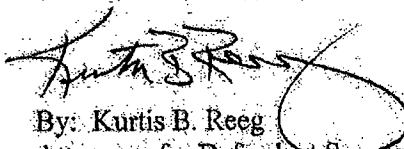
However, given the circumstances here, SCP, LLC will agree to produce said document (in Confidence and Subject to the Protective Order previously entered in this case) to Judge Mudge for an *in camera* inspection, so that he can make a determination whether this document is privileged or should be produced with or without redaction to the Plaintiffs. If the Court is agreeable, we are willing to submit said document for his inspection on Wednesday afternoon, March 30, 2011, during the time the Judge is scheduled to conduct the *in camera* inspection of other documents regarding the University of Chicago and Dr. Don Coursey, or otherwise as the Court directs. I will work with you and your clients to schedule and produce this document to the Court as the Court deems appropriate.

Mr. Stephen Tillery
March 28, 2011
Page 2

Thank you.

Yours very truly,

REEG LAWYERS, LLC

A handwritten signature in black ink, appearing to read "Kurtis B. Reeg", written over a large, stylized circular flourish.

By: Kurtis B. Reeg
Attorneys for Defendant Syngenta Crop Protection, LLC

cc: Hon. William A. Mudge, via e-mail
Mr. Michael Pope

EXHIBIT 2

1 where he was actually sending e-mails to Jane Thompson,
2 a principal there by the name of Chris Roglin (phonetic)
3 who we would subpoena for this hearing. Chris Roglin
4 (phonetic) asking for fluff to modify published opinions
5 through -- or published, I'm sorry, published articles
6 about atrazine. It's -- it's a remarkable group of
7 documents.

8 Now, the bottom line is is that there's going
9 to be all of this information, and most important of
10 which directly contradicts sworn statements by Syngenta
11 in a year ago, and we have -- and this is what I want --
12 one of the reasons I want a hearing, the Plaintiffs have
13 gone through enormous expense that could have been
14 avoided putting together a plan of distribution through
15 experts, one of whom by the way is flying in this
16 evening to my -- to St. Louis because data wasn't turned
17 over that was in the hands of this expert that they had
18 given him. Just withheld.

19 THE COURT: Well --

20 MR. TILLERY: And it's outrageous. I have been
21 trying to withhold my emotion.

22 THE COURT: All right. Well, can we establish with
23 certainty the date that he was retained?

24 MR. REEG: Syngenta, Your Honor, stipulated that

1 retention date for the purposes of this discussion is
2 January the 9th, 2009.

3 MR. TILLERY: And let me explain.

4 THE COURT: Mr. Bell agrees with that, too? I
5 mean, you represent the doctor, don't you?

6 MR. BELL: Yes, Your Honor.

7 MR. TILLERY: And could I respond to that?

8 THE COURT: All right.

9 MR. TILLERY: Yesterday -- first of all, Dr.
10 Coursey has not ever filed a privilege log. There's not
11 been one filed, but the University of Chicago gave us
12 something that could loosely be construed as information
13 about the documents and give us information. One thing
14 it didn't include or e-mailed is a reference to the
15 people who were on the e-mails.

16 Now, a litigation consultant under Illinois
17 because we have some of these people in our case right
18 now are people you retained are experts to assist you in
19 pursuing the lawsuit, okay? And you don't involve -- I
20 don't involve people who are outside vendors in
21 communications because once you do that work product
22 protection is destroyed under the rules. You clearly
23 destroy that work product protection to protect the
24 communication with that expert.

EXHIBIT 3

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT OF ILLINOIS
MADISON COUNTY**

HOLIDAY SHORES SANITARY DISTRICT,
et al., Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

SYNGENTA CROP PROTECTION LLC., et al

Defendants.

Case No. 2004-L-000710

**DEFENDANT SYNGENTA'S RESPONSE TO
PLAINTIFFS' MOTION FOR SANCTIONS**

Dr. Donald Coursey was retained by Defendant Syngenta Crop Protection, LCC ("Syngenta") as a consulting expert in 2006. After a dispute arose with Plaintiffs regarding the Dr. Coursey's date of retention – and by extension the production of non-privileged documents in Dr. Coursey's possession – Syngenta agreed to produce Dr. Coursey's documents that fell within the disputed range of Dr. Coursey's retention as a consulting expert. Syngenta's compromise was made in an effort to avoid wasting judicial time and resources on a prolonged discovery dispute. In a wasteful sideshow, however, Plaintiffs are trying to use Syngenta's good faith compromise as ammunition for a motion for sanctions. Parties should be commended, not sanctioned, for embracing the spirit of cooperation underlying the rules of discovery. Accordingly, Plaintiffs' baseless motion should be denied.

Case No. 2004-L-000710

Page 1 of 59

BACKGROUND

A. Retention of Dr. Coursey as an Consulting Expert

Plaintiffs' filed their first complaint in this case in 2004. Thereafter, Syngenta engaged the public relations firm of Jayne Thompson and Associates ("JTA") to provide certain communications and litigation support services in connection with Syngenta's defense.

On September 27, 2005, Syngenta and JTA entered a confidentiality agreement. The agreement states, in part:

Syngenta...is interested in disclosing to Jayne Thompson & Associates, Ltd...confidential information related to the Holiday Shores Sanitary District lawsuit. The sole purpose of the disclosure by Syngenta to [JTA] is to allow [JTA] to assist Syngenta in developing a public relations proposal relating to the lawsuit.

(Ex. 1.)

On October 17, 2005, Syngenta and JTA executed a Consulting Services Agreement which prescribes that JTA is to provide, among other things, "strategic communications services" and "litigation support," related to the *Holiday Shores* litigation. (Ex. 2.) The Consulting Services Agreement was entered into on behalf of Syngenta by in-house Senior Litigation Attorney Alan Nadal. (*Id.*).

In February 2006, JTA – as Syngenta's retained litigation consultant – engaged in discussions with Dr. Don Coursey, an economist and the Ameritech Professor in the Harris School of Public Policy Studies at the University of Chicago, with the goal of engaging Dr. Coursey to research and provide an opinion regarding the economic impact on farming communities of an atrazine ban. (Ex. 3, Coursey Dep. Tr., 33:22-23, 36:7-13, 43:11-22, 45:23-46:6.)

By February 14, 2006 it became clear that JTA intended to retain Dr. Coursey. (See, e.g., Ex. 3, Coursey Dep. Tr., 35:7-10.) Specifically, on February 14, 2006, Christopher Robling, a JTA principal, sent Dr. Coursey an email with the subject line "we need you," in which Mr. Robling inquired about Dr. Coursey's availability for an in-person meeting to discuss in detail the issues relating to the *Holiday Shores* litigation. (See Ex. 4, Coursey000010.) The very next day, Dr. Coursey responded to Mr. Robling's email and confirmed the date and time for this meeting. (Ex. 5, Coursey000011.) In that email Coursey writes, "[t]he deal is on." (*Id.*)

JTA representatives and Dr. Coursey met to discuss the *Holiday Shores* litigation on February 22, 2006. (Ex. 6, Coursey000013.) The documents produced by the University of Chicago – Dr. Coursey's employer – demonstrate that during the February 22 meeting, Dr. Coursey and JTA discussed, among other things, the details of the litigation, Dr. Coursey's tasks as a consulting expert, and Dr. Coursey's preliminary analysis of relevant issues. (Ex. 6, Coursey000013-15.) After this meeting, Dr. Coursey began working to develop his opinions regarding the economic impact of an atrazine ban in Illinois. (Ex. 6, Coursey000014-15.)

On June 5, 2006, Dr. Coursey attended a meeting with Sherry Duvall Ford of Syngenta. (Ex. 7, Coursey000048.) After this meeting, Dr. Coursey informed Syngenta and JTA that he would execute a formal confidentiality agreement with JTA – and that Dr. Coursey had already begun preliminary research. (Ex. 7, Coursey000048; Ex. 8, Coursey000052; Ex. 9, Coursey000053.) In an email to Ms. Ford, Jayne Thompson of JTA and Mr. Robling, Dr. Coursey wrote "sounds like the train is pulling out of the station" – presumably a reference to his expectation that his work as an expert and his involvement in the underlying *Holiday Shores* litigation would continue to grow. (Ex. 8, Coursey000052.)

On June 8, 2006, Dr. Coursey sent Ms. Ford a letter memorializing his and Ms. Ford's conversation in which Ms. Ford indicated that she would send Dr. Coursey certain materials that he could use to complete the work he had already begun regarding the economic impact of an atrazine ban. (Ex. 10, Coursey000055.) In this letter Dr. Coursey writes: "I feel that once I receive the materials we discussed on the telephone call earlier this week with appropriate input from your experts, I can complete the project by 30 September 2006." (*Id.*).

On June 22, 2006, Dr. Coursey sent an email to JTA inquiring about the materials discussed with Ms. Ford during the June 5, 2006 meeting. (Ex. 11, Coursey000062.) In that email, Dr. Coursey explained that he had not received the engagement materials and that he was "[r]eady to start work here." (*Id.*) Syngenta sent Dr. Coursey a formal engagement letter and confidentiality agreement on June 22, 2006. (Ex. 12, Coursey000063.) Dr. Coursey received these materials on June 23, 2006, and informed JTA that he intended to sign and return the materials right away. (Ex. 13, Coursey000064.) Dr. Coursey signed and returned the materials in June 2006. (Ex. 14.)

Between June 2006 and January 2009, Dr. Coursey conducted research regarding the economic effects of the loss of atrazine and drafted a report setting forth his analysis and conclusions. Moreover, during this period Dr. Coursey collaborated with JTA in connection with JTA's public relations initiative. That work included publishing a 2007 paper on this subject, and Dr. Coursey giving speeches on that topic.

On January 9, 2009, Dr. Coursey attended a meeting with Syngenta's in-house and outside counsel, including Kurtis Reeg and Mark Surprenant, regarding the *Holiday Shores* litigation. (Ex. 3, Coursey Dep. Tr., 69:19-70:2.) This was the first in-person meeting between Dr. Coursey and Messrs. Reeg and Surprenant. (Ex. 3, Coursey Dep. Tr., 15:1-13.) Outside

counsel had not previously met with Dr. Coursey because during the initial period Dr. Coursey focused on the "strategic communications services" portion of his retention.

B. Procedural History

On June 30, 2010, Plaintiffs issued subpoenas *duces tecum* to Dr. Coursey and the University of Chicago. On July 10, 2010, counsel for Syngenta informed Plaintiffs' counsel that Dr. Coursey was an expert retained by Syngenta and that "Dr. Coursey's opinions, and the bases therefor, will be disclosed in due course pursuant to whatever scheduling order is ultimately entered in" the case. (Pl. Ex. 6.)

Two days later, on July 12, 2010, Syngenta (and Dr. Coursey in a separate motion) formally asserted its objection to the subpoenas directed to the University of Chicago and Dr. Coursey in its Motions to Quash, in which it again represented that Dr. Coursey is "an expert witness retained for Syngenta Crop Protection, Inc. in this case." (See Pl. Ex. 7, ¶ 11.)

On July 19, 2010, the Court conducted a hearing regarding Syngenta and Dr. Coursey's Motions to Quash. (Pl. Ex. 9.) During that hearing, counsel for Dr. Coursey and Syngenta's counsel represented that Dr. Coursey was retained as an expert in June 2006. (Pl. Ex. 9, Tr. At 15:17-24; 16:17-22.) As detailed above, it is undisputed that Dr. Coursey did in fact execute a confidentiality agreement and engagement letter in June 2006. (See Ex. 14.)

Based, in part, upon counsel's representation at the July 19, 2010 hearing, the Court entered an order on September 22, 2010 granting Syngenta and Dr. Coursey's Motions to Quash insofar as they sought to protect from disclosure materials covered by the consulting expert privilege after June 2006. (Pl. Ex. 12, at 4.) On October 14, 2010, in accordance with the Court's September 22 order, Dr. Coursey produced six document not covered by the consulting expert privilege.

On January 14, 2011, counsel for Dr. Coursey filed a Motion to Modify the Court's Order of September 22, 2010, in which he sought leave of the Court to apply the consulting expert privilege to documents in Dr. Coursey's possession which were created between February 14, 2006 – the date on which Dr. Coursey and JTA's engagement began – and June 2006. (Pl. Ex. 14.) Syngenta did not join in Dr. Coursey's motion. In response to Dr. Coursey's motion, Plaintiffs' Counsel filed a motion seeking an evidentiary hearing regarding the date on which Dr. Coursey was retained in this case on February 16, 2011.

Two days later, in an attempt to reach a compromise, counsel for Syngenta offered to use the later of the disputed dates of Dr. Coursey's retention – January 9, 2009 – as the trigger date up to which Dr. Coursey's documents would be produced. Counsel for Syngenta did not, as Plaintiffs claim without citation or support, represent to Plaintiffs that Dr. Coursey was first retained for the purposes of this litigation on January 9, 2009. For the purposes of resolving the parties' discovery dispute regarding the production of Dr. Coursey's documents, counsel for Syngenta informed Plaintiffs in a February 18, 2011 email that the January 9, 2009 date would be used. (Ex. 15, ("I am confirming that date, for purposes of resolving this issue, as January 9, 2009, per Mr. Tillery's request.").

Shortly thereafter the University of Chicago produced approximately 900 documents which include Dr. Coursey's communications with JTA and the underlying work product created during the period February 14, 2006 to January 9, 2009.

Nevertheless, on February 23, 2011, Plaintiffs filed, without any advance notice or delivery to Syngenta or its counsel, a motion for sanctions against Dr. Coursey and Syngenta in which they allege that Syngenta and Dr. Coursey have attempted to hide documents and deceive

the Court as to when Dr. Coursey was actually retained, and moved for an evidentiary hearing on a motion defense counsel had not even had the opportunity to read.

ARGUMENT

Plaintiffs' motion for sanctions based on Syngenta's alleged failure to produce Dr. Coursey's documents falls under Rule 219(c) of the Illinois Rules of Civil Procedure. ILCS S. Ct. Rule 219(c); *see also Wadden v. Village of Woodridge*, 193 Ill. App. 3d 231, 242 (2d Dist. 1990) (sanctions for alleged discovery abuses are more properly imposed pursuant to provisions dealing with discovery rather than Rule 137). The purpose of sanctions under Illinois Supreme Court Rule 219 is to coerce compliance with discovery rules, not inflict punishment. *Shimanovsky v. Gen. Motors Corp.*, 181 Ill. 2d 112, 123 (1998). Sanctions should only be imposed when the noncompliance is unreasonable. *Id.* (citing *White v. Henrotin Hosp. Corp.*, 78 Ill. App. 3d 1025, 1028 (1st Dist. 1979)). "A party's noncompliance is 'unreasonable,' thereby warranting the imposition of sanctions, when there has been a deliberate and pronounced disregard for a discovery rule." *Shimanovsky v. Gen. Motors Corp.*, 271 Ill. App. 3d 1, 8 (1st Dist. 1994); *see also In re Vanessa C.*, 736 N.E.2d 593 (1st Dist. 2000) (due to the drastic nature of sanctions under Rule 219, they should only be imposed in the most extreme cases as a last resort to enforce discovery rules).

Moreover, any sanction imposed must be just. *Shimanovsky*, 181 Ill. 2d at 123. In determining whether a sanction is just, "a court must consider the conduct that gave rise to the sanction order and the effect of that conduct on the parties." *H & H Sand & Gravel Haulers Co. v. Coyne Cylinder Co.*, 260 Ill. App. 3d 235, 242 (2d Dist. 1994). A "just" order of sanctions pursuant to Rule 219(c) is one which, to the degree possible, insures both discovery and a trial on the merits." *Shimanovsky*, 181 Ill. 2d at 123.

Plaintiffs have failed to establish any basis for imposing sanctions against Syngenta or Dr. Coursey. Indeed, the sole purpose of imposing sanctions under Rule 219(c) – coercing compliance with discovery obligations – is absent. No compliance with a discovery rule or orders needs to be coerced because the documents at issue were produced to Plaintiffs before they filed their motion. This fact was notably absent from Plaintiffs' motion.

Also absent from Plaintiffs' motion is any explanation or support for Plaintiffs' claim that they have "suffered substantial prejudice" in their ability to prepare for trial as a result of the delay in the production of these materials. Plaintiffs have not suffered any prejudice. Dr. Coursey's documents were produced in advance of any discovery cut-off, and two weeks before Plaintiffs deposed Dr. Coursey. No documents or evidence have been destroyed, Plaintiffs have the documents they sought, and Plaintiffs have deposed Dr. Coursey, all while this case is still in the discovery stage. Moreover, in virtually the same sentence that Plaintiffs contend they have suffered substantial prejudice, they also make the claim that the documents at issue are irrelevant. (Pl. Motion, ¶ 27).

In addition to Plaintiffs' failure to identify any discovery noncompliance, or prejudice suffered, Syngenta has at all times acted in good faith. As detailed above, Syngenta had, and continues to have, a good faith basis for withholding Dr. Coursey's documents beginning when Dr. Coursey was initially consulted and retained in connection with the *Holiday Shores* litigation.¹ Syngenta's subsequent agreement to push the operative date for Dr. Coursey's

¹ Courts have found that public relations consultants retained or specially employed in relation to litigation are entitled to privilege protections. See *In re Copper Market Antitrust Litigation*, 200 F.R.D. 213 (S.D. N.Y. 2001) (holding public relations firm could assert attorney-client privilege); *In re Grand Jury Subpoenas*, 265 F.Supp.2d 321, 331 (S.D. N.Y. 2003) (communications with a public relations consultant retained in conjunction with pending litigation fell within the ambit of the attorney-client privilege). The court in *In re Grand Jury Subpoenas*, stated that (1) confidential communications (2) between lawyers and public relations consultants (3) hired by the lawyers to assist them in dealing with the media in high profile cases (4) that are made for the purposes of giving or receiving

retention back to January 2009 was made during a Rule 201(k) conference and was not an acknowledgement or admission that any prior statements or assertions regarding Dr. Coursey's retention were false. In effect, Plaintiffs' motion seeks to create a rule that concessions made during discovery conferences are evidence of prior bad faith. Not only is Plaintiffs' position unsupported and nonsensical, but it flies in the face of the purpose of Illinois Supreme Court Rule 201(k) – "to urge counsel to adopt a spirit of cooperation with regarding to discovery," *In re Marriage of Lai*, 253 Ill. App. 3d 111, 115 (1st Dist. 1993), as well as this Court's admonition that the parties "facilitate discovery and make reasonable attempts to resolve their differences over discovery pursuant to Supreme Court Rule 201(k)." (Mar. 2, 2011 Order, ¶ 12.) It is this "spirit of cooperation" that led to Syngenta's compromise. Were this Court to grant Plaintiffs' motion for sanctions, it would discourage litigants from making an offer of compromise during a Rule 201(k) conference because they would be placed in jeopardy of facing a motion for sanctions.²

WHEREFORE, base on the foregoing reasons and authorities, Defendant Syngenta Crop Protection, LLC requests that this Court deny Plaintiffs' motion for sanctions.

advice (5) directed at handling the client's legal problems, are protected by the attorney-client privilege. 265 F.Supp.2d 321, 331 (S.D. N.Y. 2003).

² Though not raised anywhere in Plaintiffs' motion, Syngenta anticipates that Plaintiffs will attempt to argue for the first time in their reply brief that Syngenta objected to the production of documents by Dr. Coursey which were generated prior to January 2009 in order to conceal documents which should have been produced earlier in response to an interrogatory requesting information regarding Syngenta's market share in Illinois. First, in Syngenta's view none of the documents produced by Dr. Coursey show the market share of Syngenta, or any of its competitors, in Illinois. Thus, none of them would have been responsive to the interrogatory. Second, if the documents from Dr. Coursey related to Syngenta's market share in Illinois and if Syngenta had been trying to conceal those documents, it would never have agreed to compromise the retention date dispute and produce the documents, as it voluntarily did here.

Respectfully submitted,

**DEFENDANT SYNGENTA CROP PROTECTION
LLC.**

By: 

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**ATTORNEYS FOR DEFENDANT
SYNGENTA CROP PROTECTION, LLC**

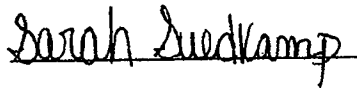
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of March, 2011, I caused to be served the attached via United States mail, properly addressed and postage paid, upon the following counsel:

TO: Stephen M. Tillery, Esq.
Christine Moody, Esq.
Korein Tillery, L.L.C.
U.S. Bank Plaza
505 North 7th Street, Suite 3600
St. Louis, MO 63101,

Mr. Scott Summy
Baron & Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219

Attorneys for Plaintiffs
HOLIDAY SHORES SANITARY DISTRICT, et al



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EXHIBIT 1

Case No. 2004-L-000710

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Cause No. 04-L-710

Syngenta Crop Protection, Inc. Tel 336 632 6000
P.O. Box 18400
Greensboro, NC 27419-8300
www.syngenta.com



September 27, 2005

Jayne Thompson & Associates, Ltd.
33 North Dearborn Street
Suite 2200
Chicago, IL 60602-3857

Attention: Jayne Thompson

Dear Jayne:

Syngenta Crop Protection, Inc (hereinafter "Syngenta") is interested in disclosing to Jayne Thompson & Associates, Ltd. (hereinafter "Company") confidential information related to the Holiday Shores Sanitary District lawsuit. The sole purpose of the disclosures by Syngenta to Company is to allow Company to assist Syngenta in developing a public relations proposal relating to the lawsuit.

Company acknowledges that some of the information to be disclosed by Syngenta is considered by Syngenta to be confidential. Syngenta agrees to make and Company agrees to receive the disclosures contemplated hereunder on the following terms and conditions:

1. For the purposes hereof, the term "Confidential Information" shall mean all information relating to the Holiday Shores Sanitary District lawsuit from time to time disclosed by Syngenta to Company. Confidential Information shall not include, and this Agreement shall not restrict the use or dissemination of, any information which:
 - a) is known to Company prior to its disclosure hereunder,
 - b) is or becomes public information or is generally available to the public other than by an unauthorized act or omission of Company,
 - c) is discovered or developed hereafter by an employee of Company who is shown not to have had access to the information furnished by Syngenta, or
 - d) is received by Company from third parties who are in rightful possession of such information and not under an obligation of confidentiality to Syngenta.
2. Confidential Information shall not be deemed to be available to the public or to be in Company's possession merely because it:



Page 2

- a) Is specific information that falls within an area of general knowledge available to the public or to Company, but without the specific Confidential Information, including its meaning and importance, being public knowledge or known to Company; or
 - b) Can be reconstructed from a combination of information that can be pieced together from multiple sources that are available to the public or to Company, if none of those sources actually lead one to the entire combination, together with its meaning and importance.
3. Syngenta and Company agree that the term of this Agreement will be for five (5) years from the date first written above, however Company shall not for a period of ten (10) years after the date of this agreement, use Syngenta Confidential Information for any purpose other than that for which it was disclosed and shall not make any patent filings or patent applications that reference or otherwise disclose Confidential Information nor disclose Syngenta Confidential Information to any third party. Company shall use the same precautions to prevent the disclosure of Syngenta Confidential Information to third parties as it uses to prevent the disclosure of its trade secrets to third parties. Company agrees to return all Confidential Information disclosed to it by Syngenta upon written request of Syngenta. However, Company may disclose Confidential Information pursuant to a court order or other governmental action or law, provided that Company provides Syngenta with reasonable notice of such requirement for disclosure so that Syngenta may appeal such requirement, obtain any available protective order, or the like.
4. Nothing herein contained shall prevent Recipient from divulging Confidential Information to its employees or employees of its affiliates who have a need to know and who agree to observe the same restrictions with respect thereto as are assumed by Recipient hereunder.
5. No rights other than those set forth herein are granted hereby and nothing contained in this Agreement shall be construed as creating an express or implied license to practice the Confidential Information.

syngenta

Page 3

6. Without prejudice to any rights and remedies otherwise available to the parties, each party shall be entitled to seek equitable relief by way of specific performance, injunction or otherwise if the other party or any of its affiliates breaches or threatens to breach any provisions of this Agreement.
7. This Agreement contains the entire understanding of the parties hereto, and may not be changed except by another writing executed by the parties and shall be interpreted in accordance with and governed by the laws of the State of North Carolina.

Please indicate your agreement by signing and returning the duplicate original of this letter to us.

Very truly yours,

Syngenta Crop Protection, Inc.

By:  (en)

Alan Nadel
Senior Litigation Attorney

AGREED: Jayne Thompson & Associates, Ltd.

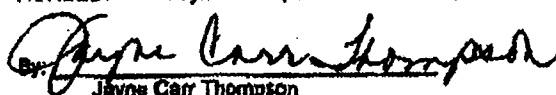
By:  9/29/05
Jayne Carr Thompson
President

EXHIBIT 2

Case No. 2004-L-000710

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Cause No. 04-L-710

JAY-03549

JAYNE THOMPSON & ASSOCIATES, LTD.

SUITE 2200
33 NORTH DEARBORN STREET
CHICAGO, ILLINOIS 60602-3857
WWW.JAYNETHOMPSON.COM

TEL 312.658.0445

FAX 312.658.0464

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (this "Agreement") is made as of this seventeenth day of October, 2005, between Syngenta Corp. Protection, Inc. (Client), and Jayne Thompson & Associates, Ltd., an Illinois corporation ("Consultant").

1. Length of Agreement.

This Agreement is effective from October 13, 2005, to and including October 12, 2006, provided that either party may terminate this Agreement upon thirty (30) days' written notice to the other. Syngenta may, in its sole discretion, terminate this Agreement if the services provided, or the progress of the work, hereunder is unsatisfactory to Syngenta.

2. Payment of Consulting Fee.

Client shall pay Consultant the sum of \$27,500.00 per month as a non-refundable retainer fee for the strategic communications services outlined in Consultant's proposal to Client dated October 3, 2005 and therein captioned "Litigation Support" (page 4) and "Illinois Campaign" (page 6). Those strategic communications services captioned "Other Recommendations" (page 9 of the aforesaid Proposal) are specifically excluded from the terms of this Agreement. The parties have agreed that any subsequent decision to incorporate the "Other Recommendations" into Consultant's deliverables to Client shall be separately agreed upon and compensated unless specific projects are agreed upon by both parties to be included in the monthly retainer.

3. Expenses.

The Client shall pay all out-of-pocket expenses incurred by Consultant, including all necessary office expenses, which include, but are not limited to costs for telephone, facsimile, copying, monitoring services, travel, messenger services, postage, and any special wire service fees applicable to disseminating public statements on behalf of Client. These expenses shall be billed to Client at cost. Consultant is not obliged to advance any out-of-pocket expenses, but if so advanced, Client agrees to pay all such expenses within thirty (30) days of the billing date. Consultant will obtain prior client approval for any single expenditures over \$5,000.

STRATEGIC COMMUNICATIONS CONSULTANTS

4. Billings.

Consultant will bill Client for consulting services to be performed and Client agrees to pay said bills in full within thirty (30) days of the date of billing, unless other arrangements are expressly made and agreed upon between Consultant and Client. Consultant will accompany each invoice with a comprehensive service report and detailed expense report. Client agrees to make specific objections to a bill, including amount, type, scope, and reasonableness of services to Consultant in writing within thirty (30) days of the billing date. Any bill not objected to within thirty (30) days is deemed final, and in reliance thereon, Consultant may continue to render services. Consultant at any time may require advance payment of funds for specific costs and services reasonably anticipated to be incurred in the future. In the event Consultant requests such payment, Client will promptly comply. At no time thereafter will Consultant be obligated to perform services until the requested advance payment is made. All such advances shall be held in trust by Consultant. Statutory interest rates shall be charged on all past due balances.

5. Remedies.

In the event Client fails to make payment as required under this Agreement, Consultant, without any further notice, may cease work. In the event Client fails to comply with any provision of this Agreement, including the making of any payment required, Client expressly authorizes Consultant, in advance, at Consultant's sole election and upon written notice to Client at Client's last known address, to cease performing consulting services for Client. If Consultant does not require strict performance of any provision or part of any provision of this Agreement for any reason, said action shall not limit or waive Consultant's right to enforce said provision or other provisions at a later time.

6. Confidentiality.

Consultant shall maintain in confidence and communicate to no one any materials, confidential information or Client secrets to which Consultant has acquired access or learned through the Client during the course of performance of this Agreement, including, but not limited to Client plans and strategies. All materials developed at the request of the Client are the Client's property.

7. Client Cooperation.

Client hereby states that to the best of its knowledge, all information provided to Consultant is true, correct, and sufficiently complete so as to preclude a potentially misleading or erroneous work product from being generated by Consultant for Client. Further, Client will cooperate with Consultant so that Consultant may provide consulting services as efficiently as possible.

8. Indemnification.

Client agrees to indemnify Consultant, hold Consultant harmless, and defend Consultant from and against any liability or damages that Consultant may suffer out of the operation of this Agreement as a result of any claim, attorney's fees, demand, cost, expense, order, award or judgment that arises from anyone, including any state or federal government, or agency thereof, bringing action, proceeding or investigation, whether rightfully or wrongfully brought, commenced or instituted so long as such liability or damages were not caused by the fault or negligence of Consultant.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CLIENT:

Syngenta Corp. Protection, Inc.

By: 

Name: Alan Nadel, Esq.

Title: Counsel

Address for Notices

410 Swing Road

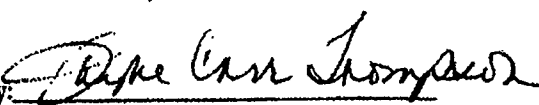
Greensboro, NC 27409

Attn: Alan Nadel, Esq.

Facsimile No. (336) 632-2012

CONSULTANT:

JAYNE THOMPSON &
ASSOCIATES, LTD.

By: 

Name: Jayne Carr Thompson

Title: President

Address for Notices:

33 North Dearborn Street, Suite 2200

Chicago, Illinois 60602

Attn: Jayne Carr Thompson

Facsimile No. (312)658-0464

EXHIBIT 3

Case No. 2004-L-000710

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Cause No. 04 L 710

Coursey Don.txt
24 A. I don't recall meeting him or hearing of him,
25 no.

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 Q. All right. Now, without getting into
2 conversations with lawyers, when was the very first time
3 you ever communicated with Mr. Reeg?

4 A. I went to a meeting that Mr. Reeg was
5 attending in January of 2009 and a met them there.

6 Q. And where was that?

7 A. Greensboro South Carolina.

8 Q. Was that when you were retained in connection
9 with the litigation?

10 A. No. I was asked to deal with this back in
11 2006 when I was initially contacted by Syngenta to
12 address issues on potential bans of atrazine in
13 Illinois.

14 Q. And a that was the Sherry Ford contact?

15 A. Sherry Ford was the big contact down there.

16 Q. We are a' going to spend a lot of time talking
17 about that.

18 A. Okay.

19 Q. So did you talking to Mr. Reeg back in 2006?

20 A. No, sir.

21 Q. Had you ever talked to him from January 2006
22 to January 2009?

23 A. No.

24 Q. Did you ever talk to Mr. Suprenant?

25 A. No.

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1 of compliance that you verified that the documents
2 produced were all all of the documents were your hard
3 drive; is that correct?

4 MR. BELL: Object to the form.

5 A. I don't know how it to answer a your question.

6 Q. Okay. What was the first pesticide that you
7 ever studied?

8 A. Studied?

9 Q. Analyzed, learned about, wrote about,
10 researched, pick any of those terms and answer a my
11 question?

12 A. I would say as a young boy not exactly a
13 pesticide by DDT and the controversy about that.

14 Q. Did you do any research on that?

15 A. No, sir.

16 Q. Just had an interest in it it?

17 A. Yes, sir.

18 Q. What was the next pesticide?

19 A. I never studied a major pesticide before I was
20 asked to look at atrazine.

21 Q. And when were you asked to look at atrazine?

22 A. I was approached by Chris Robling in the
23 middle of the wintertime in 2006 in my office.

24 Q. Had you known him before?

25 A. Yes.

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UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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Page 31

Coursey Don.txt

3 Q. With whom did you ever share your statement
4 about your retention by Syngenta?

5 A. No one.

6 Q. No one. Okay.

7 When were you retained as a litigation
8 consultant?

9 A. I was retained to work on litigation issues
10 for them in the early part of 2006.

11 Q. And what is a litigation consultant?

12 A. I'm not, again, an expert, sir but I think to
13 me what a litigation consultant means is you work for a
14 client who is working on a situation where there is some
15 lit Gus event occurring or perhaps occurring and
16 providing them background research that they would be
17 preparing themselves or they wouldn't have asked you to
18 do that.

19 My understanding and I'm not going to pars
20 words with you because I'm not an an expert or legal
21 expert by any means but it also means that sometimes an
22 an expert will do legal work for a client sometimes
23 well.

24 But my understanding is it's a blend of either
25 of those two things sometimes completely at a one end of

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 the spectrum sometimes at the other but I'm not a legal
2 scholar.

3 Q. And with whom did you share your opinion about
4 being retained as a legal consultant when you were

Page 33

Coursey Don.txt

5 subpoenaed?

6 MR. BELL: Objection.

7 Q. I'm trying to find out that representations

8 were made to the court that you were a litigation

9 consultant in July and August an of 2010?

10 A. I don't know the answer to that question. I

11 know I've been working for Syngenta all along on

12 materials that they have decided how to use and may want

13 to be used in litigation by them.

14 Q. Let me ask you this: Did you tell Syngenta to

15 withhold documents from production because you were a

16 litigation consultant?

17 A. No.

18 Q. Did you ever tell anybody to withhold

19 documents from production because you were a litigation

20 consultant?

21 A. No.

22 Q. Do you know who made that determination to

23 withhold documents on your behalf?

24 MR. POPE: Objection to form of the question.

25 MR. BELL: Show my objection as well. There was

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 obviously a court order in effect.

2 Q. Do you know who made the determination?

3 A. I'm -- no.

4 Q. Let me ask you this: Were you aware of the

5 fact that documents were withheld from production based

6 on the fact you were a litigation consultant a?

Page 34

Coursey Don.txt
17 Q. And is he a member there?
18 A. I have no idea.
19 Q. Do you belong to any other similar
20 organizations?
21 A. No, sir.
22 Q. What has your role been with respect to the
23 heart land institute?
24 A. Zero practically.
25 Q. Do you have any knowledge of any activities by

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 the heart land institute with respect to Syngenta or
2 atrazine?
3 A. No, sir.
4 Q. Now you talked about Chris Robling you talked
5 about the one situation --
6 A. The what situation.
7 Q. Where you first met him. What was the next?
8 A. The next would have been him discussing with
9 me Syngenta.
10 Q. When would that have been?
11 A. I believe the first time he came down was in
12 late January, early February, 2006. Come down what I
13 mean by that is call me, "can I couple and talk to you
14 in Hyde Park," where my office was located.
15 Q. What did he talk to you about?
16 A. He talked to me about the fact that a product
17 called atrazine on the marketplace was involved in some
18 litigation, had to do with science, had to do with

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Coursey Don.txt
19 epidemiology. I said I don't know much about those
20 things. But he said it would involve essentially if the
21 litigation goes in certain directions the effective
22 banning of this product in the state of Illinois.

23 Q. He told you that?

24 A. Yes.

25 Q. And did you assume he was right when he said

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 it would be banned?

2 A. I had no reason not to.

3 Q. Did you take that assumption of banning as a
4 the basis of your proposal to Syngenta soon after?

5 A. His question to me sir was would it be
6 possible to analyze such a potential ban economically.

7 Q. Did you make an an independent assessment of
8 whether or not anything in the litigation would cause a
9 ban of atrazine?

10 A. No.

11 Q. Was there any source other than Chris Robling
12 for your assumption or conclusion that the litigation
13 would cause a ban of atrazine?

14 A. No.

15 Q. Now, did he tell you that he had been retained
16 by Syngenta?

17 A. He told me that he and his firm were working
18 with Syngenta in a variety of different things some
19 having to do with more public relations, some having to
20 do with the litigation. I never asked him if he had

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23 Coursey Don.txt
23 A. I was asked to do an analysis that assumed a
24 ban. I was not asked to determine whether a ban would
25 occur or not.

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 Q. An and you were asked to do that by
2 Mr. Robling?
3 A. Yes, sir.
4 Q. Did you understand that you were being asked
5 to do that on behalf of Syngenta?
6 A. Absolutely.
7 Q. And that they assumed a ban from the
8 litigation?
9 A. I do not know what they were thinking.
10 Q. Can you today tell me how litigation would
11 cause a ban?
12 A. I'm not a lawyer. I would assume that under
13 various outcomes of various different lawsuits around
14 the country, firms would find it in their interest not
15 to deal with a particular marketplace if it was not
16 conducive to that -- to selling in that marketplace.
17 Q. Anything else besides that?
18 A. No. It was not my job to discuss that issue.
19 Q. So there was no more factual or scientific
20 basis for your assumption?
21 A. No.
22 Q. Do you know how many states are involved in
23 the Greenville case?
24 A. No.

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Coursey Don.txt
8 Q. Who is his young assistant?
9 A. A woman named Carrie Eggers.
10 Q. Who did she work with?
11 A. She worked for Jayne Thompson & Associates.
12 Q. Is she still there?
13 A. No.
14 Q. When did she leave?
15 A. She left about two summers ago.
16 Q. Do you still work on projects with Jayne
17 Thompson & Associates?
18 A. Yes.
19 Q. We have your documents up until January 2009.
20 What changed, what took place in January 2009 which
21 altered your relationship in any way?
22 A. I went to a meeting in Greensboro and met curt
23 RIGG and mark SUPRENTANT and a we had some discussions
24 there. They indicated to me they wanted to be using me
25 as an expert witness at a sometime and an I wanted to go

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

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1 down to New Orleans and talk with them and shortly after
2 a the meeting in 2009 I did that.
3 Q. Now what I'm asking is, have you continued to
4 work on your working papers similar to the 2007 Illinois
5 paper on other projects?
6 MR. POPE: AS opposed to consulting.
7 BY MR. TILLERY:
8 Q. AS opposed to consulting work in the
9 litigation?

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EXHIBIT 4

Case No. 2004-L-000710

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Cause No. 04-L-710

From: Chris Robling [crobling@jaynethompson.com]
Sent: Tuesday, February 14, 2006 4:21 PM
To: Don Coursey
Subject: we need you

dear don,

hope to come see you at your convenience to more fully brief you on this matter.

please let me know when that works for you.

thanks and best,

chris

Chris Robling
Principal
Jayne Thompson & Associates
Suite 2200, 33 North Dearborn Street
Chicago, Illinois 60602-3102
v 312-658-0445
f 312-658-0464
m 312-343-2026
crobling@jaynethompson.com <<mailto:crobling@jaynethompson.com>>

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EXHIBIT 5

Case No. 2004-L-000710

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Cause No. 04-L-710

From: dlcourse@uchicago.edu
Sent: Wednesday, February 15, 2006 10:07 PM
To: Chris Robling
Subject: Re: ok for tomorrow...

Chris,

I received your call. The deal is on. See you around 1:45.

Don

EXHIBIT 6

Case No. 2004-L-000710

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Cause No. 04-L-710

From: dcourse@uchicago.edu
Sent: Thursday, February 23, 2006 9:18 AM
To: crobling@jaynethompson.com
Cc: d-coursey@uchicago.edu
Subject: Atrazine
Attachments: Robling Notes re Atrazine February 2006.doc

Chris,

Thanks again for coming down to the University last week and for the atrazine briefing.

I attach my rough notes regarding a logical approach for analyzing an atrazine ban. You will see that the analysis involves a two-pronged approach. The economic and environmental effects of an atrazine ban will be examined. I think that it will be quite straight-forward to show that a ban will produce a lose-lose-lose situation for Illinois farmers, the environment, and Illinois communities.

The next step will be to talk with State agricultural professionals about farmers' decision tree structures and farmers' crop production functions. Then the logic outlined in this note can be quantified in terms of economic magnitude.

I will be away tomorrow and for the weekend giving a set of lectures for the University in Arizona. But I will be back in the office Monday morning.

My cell phone number is 219 789 6895 if you want to talk over the next few days.

I look forward to your reactions.

Doh Coursey

22 February 2006

**Notes Regarding Agricultural Atrazine Use in Illinois
Don Coursey, University of Chicago**

**Prepared for Chris Robling
Jayne Thompson and Associates**

You have asked me to consider the economic and environmental aspects of a ban on the agricultural use of atrazine in the State of Illinois. In this note I will outline the logical steps necessary to complete this task.

1. The first implication of a ban on atrazine use will be to shift corn production from Illinois to adjacent states. There will be general equilibrium effects on on forms of crop production in the Midwest United States.
2. It must be assumed that Illinois farmers who currently use atrazine in the production of corn are doing so because that is their current best alternative. It is currently in their profit-maximizing self-interest to do so. Therefore, any ban on atrazine with without question hurt them.
3. What are their alternatives? They could stop farming altogether. This is unlikely, but possible. In this case their profits from agriculture are zero and, in parallel, their impact upon the environment is zero.
4. Second, they could continue to grow corn using non-atrazine technology. In this case their profits will be less than those under the atrazine regime (the EPA estimates higher costs on the order of \$28 per acre). Additionally, whatever new pesticides they use will have their own environmental impacts. And, since other substitute products will involve tilling operations on farms, there will be issues regarding airborne and waterborne sediments for the environment. Finally, the extra tilling will involve the use of fuels to power the tilling equipment. The burning of these fuels will affect air quality.

Confidential

Coursey000014

Case No. 2004-L-000710

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----- Cause No. 04-L-710

5. The third option for farmers will be to shift into the production of another crop (in Illinois this would most likely be soy beans but the analysis that follows would apply to any alternative crop). Soy production involves its own set of pesticides, tilling, and equipment operation. As in point four above, there will be environmental consequences as a result of the shift away from corn.

6. The main point here is that there are two sets of accounting measures that are important. The first is the financial accounting ledger. Profits will fall when farmers are banned from using atrazine. The second is the environmental ledger. Here, the environmental impact of atrazine must be balanced against the environmental impacts of non-atrazine alternatives, sedimentation issues, and fuel burning issues.

7. What is needed to empirically flesh out the logic above is a better understanding of the decision tree facing Illinois farmers, information about the production function for corn, beans, and other alternative crops, and information about the size of the environmental externalities produced by different crops and different pesticide technologies.

8. All of the farming adjustments discussed above will have implications on farmers' revenue streams. They will also have implications for the environment. These affects will be felt by the farmers, the communities in which the farmers reside, and by the State of Illinois. Tax revenues can be expected to fall. And environmental conditions can be expected to be different under the non-atrazine regime.

9. The next level of change will be felt at the level of local goods and services. Falling tax revenues will affect school funding choices, police and fire protection budgets, and other local and State public goods that are funded by tax revenues.

10. Because agricultural production in Illinois often occurs in counties that are relatively poor compared to other Illinois counties, the net affects of the atrazine ban will tend to be regressive. Falling tax revenues in the agricultural counties will result in less monies available for many of the State's less well off citizens.

EXHIBIT 7

Case No. 2004-L-000710

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Cause No. 04-L-710

From: discourse@uchicago.edu
Sent: Monday, June 05, 2006 12:49 PM
To: sherry.ford@syngenta.com
Cc: crobling@jaynethompson.com; jthompson@jaynethompson.com
Subject: Todays Discussion

Sherry,

Today's discussion was great for me. It moved many issues forward in my mind. Thanks again for bringing all of the players together on the phone.

I am ready to start moving on the project. Would you please sign the contract that Chris forwarded to you. I plan to work through Jayne Thompson and Associates on the project. Also, as we discussed, I am willing to sign any statement about confidentiality that you desire.

I await the bundle of studies that we discussed. After digesting this information, I am sure that I will have follow-up questions for your group. Additionally, I think that this material will prepare me for some field discussions with members of your firm and with professionals in the field.

I still anticipate finishing my report by the end of September. And I look forward to working with you on this important effort.

Don Coursey
University of Chicago

EXHIBIT 8

Case No. 2004-L-000710

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Cause No. 04 L 710

From: sherry.ford@syngenta.com
Sent: Wednesday, June 07, 2006 9:37 AM
To: dlcourse@uchicago.edu
Subject: RE: Todays Discussion

Don---Would you prefer we execute the confidentiality agreement with you personally or with you in your role as professor with Univ. of Chicago?
If latter, will need your office address.

Thanks,
Sherry

-----Original Message-----

From: dlcourse@uchicago.edu [<mailto:dlcourse@uchicago.edu>]
Sent: Monday, June 05, 2006 4:02 PM
To: Ford Sherry USGR
Cc: jthompson@jaynethompson.com; crobling@jaynethompson.com
Subject: RE: Todays Discussion

Great; sounds like the train is pulling out of the station.
Send the materials to my home. Again:

135 Ogden Road
Ogden Dunes, Indiana 46368

219-764-0934.

Don

EXHIBIT 9

From: dlcourse@uchicago.edu
Sent: Wednesday, June 07, 2006 9:50 AM
To: sherry.ford@syngenta.com
Subject: RE: Todays Discussion

I think that it should be as a person.

Don

EXHIBIT 10

Case No. 2004-L-000710

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Cause No. 04-L-710

Don Coursey
Ameritech Professor of Public Policy
University of Chicago

8 June 2006

Ms. Sherry Duvall Ford, APR
Senior Communications Manager -- Crop Protection
Syngenta America Inc.
P. O. Box 18300
Greensboro, NC 27419-8300

Dear Sherry,

I enjoyed our conversation earlier this week and look forward to working with you concerning the economics of atrazine use in Illinois.

I feel that once I receive the materials we discussed on the telephone call earlier this week and with appropriate input from your experts, I can complete the project by 30 September 2006. I propose billing at my hourly rate of \$500.00 and I will invoice you monthly. Payment can be sent to me at the following address:

Don Coursey
135 Ogden Road
Ogden Dunes, IN 46368

If, after report preparation, you desire that I make public presentations of the report, then those presentations, plus travel time, will be billed at the hourly rate.

As we discussed, I may need the help of a graduate student assistant. The rate for such service is \$50.00 per hour per graduate student. The hours worked by such a person would be limited to a maximum of 100 over the summer. At this point, I envision needing only one such person.

Finally, I understand that I will be compensated for any costs associated with travel during the project (coach class airfare, hotel, meals). I do not anticipate much travel, except possibly to meet with the experts we have discussed during our phone conversations.

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Coursey000055

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June 8, 2006
Ms. Sherry Duvall Ford
Page Two

If these terms are acceptable, please sign below and return the original to me at the above address. I will commence work on this project as soon as I have received the signed letter agreement.

Again, I look forward to working with you and Jayne Thompson and Associates on the project.

Sincerely,

Don Coursey for

Don Coursey
Ameritech Professor of Public Policy
University of Chicago

Accepted on behalf of Syngenta America Inc.

Sherry Duvall Ford, APR
Senior Communications Manager - Crop Protection
Syngenta America Inc.

Confidential

Coursey000056

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EXHIBIT 11

Case No. 2004-L-000710

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Cause No. 04-L-710

From: dlcourse@uchicago.edu
Sent: Thursday, June 22, 2006 8:14 AM
To: Chris Robling
Subject: Re: how are things going?

I have not received anything from her. Ready to start work here. Do not understand delay.

Hope you are doing well.

Don

EXHIBIT 12

Case No. 2004-L-000710

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Cause No. 04-L-710

From: Chris Robling [crobling@jaynethompson.com]
Sent: Thursday, June 22, 2006 4:41 PM
To: Don Coursey; Don L. Coursey Ph. D.
Subject: contract overnighting to you

dear don, late afternoon email from sherry indicates signed docs and additional materials on their way:

Jayne---I am sending a package overnight to Don's home with:

Letter of agreement
Confidentiality agreement
Copy of a 1996 atrazine benefits assessment for background

Instructions to Don in cover note (you will get a copy) are to sign all copies and send one of each back to Alan Nadel.

pls advise any problems.

thanks and best,

chris

Chris Robling
Principal
Jayne Thompson & Associates
Suite 2200, 33 North Dearborn Street
Chicago, Illinois 60602-3102
v 312-658-0445
f 312-658-0464
m 312-343-2026
crobling@jaynethompson.com <<mailto:crobling@jaynethompson.com>>

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EXHIBIT 13

Case No. 2004-L-000710

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Cause No. 04-L-710

From: dlcourse@uchicago.edu
Sent: Friday, June 23, 2006 9:36 AM
To: Chris Robling
Subject: Re: contract overighting to you

Chris,

It just arrived. I will sign and return today.

Don

EXHIBIT 14

Case No. 2004-L-000710

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Cause No. 04-L-710

AME- 06755
Syngenta Crop Protection, Inc.
P.O. Box 18300
Greensboro, NC 27419-8300
www.syngenta.com



June 22, 2006

Dr. Don Coursey
Ameritech Professor of Public Policy
135 Ogden Road
Ogden Dunes, IN 46368

Dear Dr. Coursey:

Syngenta Crop Protection, Inc. (hereinafter "Syngenta") is interested in disclosing to you proprietary information related to a working paper on atrazine. The sole purpose of the disclosures by Syngenta is to educate and inform you regarding atrazine regulation and use in Illinois (the "Purpose").

You acknowledge that some of the information to be disclosed by Syngenta is considered by Syngenta to be proprietary and protected as trade secrets. Syngenta agrees to make and you agree to receive the disclosures contemplated hereunder on the following terms and conditions:

1. For the purposes hereof, the term "Proprietary Information" shall mean all information relating to the Purpose from time to time disclosed by Syngenta to you. Proprietary information shall not include, and this Agreement shall not restrict the use or dissemination of, any information which:
 - a) is known to you prior to your disclosure hereunder,
 - b) is or becomes public information or is generally available to the public other than by an unauthorized act or omission of you,
 - c) is discovered or developed hereafter by an employee of yours who is shown not to have had access to the information furnished by Syngenta, or
 - d) is received by you from third parties who are in rightful possession of such information and not under an obligation of confidentiality to Syngenta.
2. Proprietary Information shall not be deemed to be available to the public or to be in your possession merely because it:
 - a) is specific information that falls within an area of general knowledge available to the public or to you, but without the specific Proprietary Information, including its meaning and importance, being public knowledge or known to you; or



Dr. Don Coursey
June 22, 2006
Page 2

- b) Can be reconstructed from a combination of information that can be placed together from multiple sources that are available to the public or to you, if none of those sources actually laid out the entire combination, together with its meaning and importance.
3. Syngenta and you agree that the term of this Agreement will be for three (3) years from the date first written above; however, you shall not for a period of ten (10) years after the date of this Agreement, use Syngenta Proprietary Information for any purpose other than that for which it was disclosed and shall not make any patent filings or patent applications that reference or otherwise disclose Proprietary Information nor disclose Syngenta Proprietary Information to any third party. You shall use the same precautions to prevent the disclosure of Syngenta Proprietary Information to third parties as it uses to prevent the disclosure of its trade secrets to third parties. You agree to return all Proprietary Information disclosed to you by Syngenta upon written request of Syngenta. However, you may disclose Proprietary Information pursuant to a court order or other governmental action or law, provided that you provide Syngenta with reasonable notice of such requirement for disclosure so that Syngenta may appeal such requirement, obtain any available protective order or the like.
4. Nothing herein contained shall prevent you from divulging Proprietary Information to your employees who have a need to know and who agree to observe the same restrictions with respect thereto as are assumed by you hereunder.
5. No rights other than those set forth herein are granted hereby and nothing contained in this Agreement shall be construed as creating an express or implied license for you to use the Proprietary Information for any purpose without prior written approval from Syngenta.
6. Without prejudice to any rights and remedies otherwise available to the parties, Syngenta shall be entitled to seek equitable relief by way of specific performance, injunction or otherwise if you or any of your affiliates breaches or threatens to breach any provisions of this Agreement.
7. This Agreement contains the entire understanding of the parties hereto, and may not be changed except by another writing executed by the parties and shall be interpreted in accordance with and governed by the laws of the State of North Carolina. By affixing their signatures below, the undersigned hereby certify and warrant that they understand the legal significance of the terms of this Agreement and that they have the legal authority to bind the organizations they represent to the terms contained herein.

syngenta

Dr. Don Coursey
June 22, 2006
Page 3

Please indicate your agreement by signing and returning the duplicate original of this letter to us.

Very truly yours,

Syngenta Crop Protection, Inc.

By: *W. H. H. - C.H.*

Title: *Head, CP Media Relations*

AGREED:

[Signature]
Dr. Don Coursey
Ameritech Professor of Public Policy

EXHIBIT 15

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Cause No. 04-L-710

Boos, Karen

From: Kurtis Reeg [kreeg@reeglawfirm.com]
Sent: Friday, February 18, 2011 1:54 PM
To: Tillery, Stephen; Deaton, Christie; Mabry, Charlotte
Cc: Paul Knobbe; Brian Connolly; Mart Mitchell; Sarah Suedkamp; Mark Surprenant; Pope, Michael; Murphy, Chris
Subject: HSSD v. Syngenta Crop Protection, LLC
Attachments: image002.jpg

Dear Steve and Christie:

I am out of the office (as is Steve), so forgive this e-mail format as opposed to a letter. My family is headed to Chicago for the weekend to celebrate our oldest son's birthday with him.

I was surprised by Mr. Tillery's note and message this morning that Plaintiffs intended for the Wednesday hearings would proceed as scheduled. When Steve and I spoke yesterday, I advised of my understanding that the Coursey/University of Chicago documents would be produced prior to the scheduled hearing. For purposes of the pending discovery motion, and not waiving any arguments as to relevance and admissibility, the documents would be produced up until a designated date of retention of Dr. Coursey by Syngenta's counsel as a consulting expert. I am confirming that date, for purposes of resolving this issue, as January 9, 2009, per Mr. Tillery's request. Plaintiffs had asked that prior decisions regarding the privilege/production of certain of these materials be re-considered; they were reconsidered and the conclusion to produce was reached. It is my understanding that they will be so produced by the third party(ies) who control and possess those documents. Assuming that happens in advance of the hearing, we cannot see how Plaintiffs are prejudiced by having what they asked for.

As for the motion to compel, and Ms. Deaton's latest letters (I do not have them with me) re the same, I agreed with Mr. Tillery yesterday that Syngenta's counsel was willing to sit down anywhere, any time, with whomever plaintiffs desired, to discuss a wide host of issues re Syngenta's document productions, including but not limited to: the numbers of documents contained in the last couple of productions, the number of remaining documents, the time frame involved in producing them, our rolling privilege log and disputes regarding designations thereon, and whatever else plaintiffs wanted to discuss. I also advised Mr. Tillery that I was intending to be in North Carolina the entire week of February 21, 2011, to work solely on discovery-related issues in this litigation. Instead of accepting the invitation to meet and confer, we were met with notice of Plaintiffs' intent to nevertheless proceed with the motion hearings. We are attempting to honor your requests to meet and confer and comply with Rule 201(k). Thus, we would encourage Plaintiffs to reconsider their position.

In our view, there is nothing sacrosanct about having these matters heard on February 23 if the requested Coursey documents are delivered and the parties begin to meet and confer regarding the other discovery issues. If Plaintiffs are not satisfied at the conclusion of our discussions, they have the Court available to seek assistance. As I told Mr. Tillery yesterday, it makes more sense to us to meet and confer and try to make progress to the extent we can agree before we proceed to court. It also makes more sense to us that I be able to continue to investigate Plaintiffs' discovery requests and work on obtaining the information you are seeking rather than be derailed by this hearing.

Paul Knobbe and Mart Mitchell are available at my office to assist regarding the above. We hope we can reach accommodations on all of these issues and appreciate your consideration and anticipated cooperation.

Thank you. Kurt

Kurtis B. Reeg
President-Managing Partner

REEG LAWYERS, LLC

1 North Brentwood Boulevard, Suite 950

Saint Louis, Missouri 63105

Office: 314.446.3350

Direct: 314.446.3351

Cell: 314.574.2287

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Internal Revenue Service Circular 230 Statement Applicable To Tax Advice, If Any, Contained In This Communication: New Treasury Regulations require us to inform you that neither you nor any other recipient may use any tax advice in this communication to avoid any penalty that may be imposed under federal tax law. To obtain penalty protection, the new Regulations require attorneys, accountants and other tax advisors to perform increased due diligence to verify all relevant facts and to format the written tax advice in a lengthy number of separately enumerated sections with numerous disclosures. If you would like us to prepare written tax advice designed to provide penalty protection, please contact us and we will be pleased to discuss the matter with you in more detail.

EXHIBIT 4



KOREIN TILLERY

Attorneys at Law

One US Bank Plaza
505 North 7th Street, Suite 3600
St. Louis, Missouri 63101
www.koreintillery.com

STEPHEN M. TILLERY

stillery@koreintillery.com

p: 314.241.4844

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SANDOR KOREIN
STEPHEN M. TILLERY
STEVEN A. KATZ
DOUGLAS R. SPRONG
CHRISTINE J. MOODY
*STEPHEN A. SWEDLOW
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AARON M. ZIGLER
ROBERT L. KING
*KLINT L. BRUNO

DIANE MOORE HEITMAN
CHRISTIE R. DEATON
JOHN A. LIBRA
ALEXIS C. TILLERY
*MAXIMILIAN C. GIBBONS
CHRISTOPHER A. HOFFMAN
**AIDAN M. MCNAMARA
*MATTHEW C. DAVIES
MICHAEL E. KLENOV
**JOSEPH A. PEREZ-MAUTES
***ROSEMARIE FIORILLO
JOHN C. CRAIG
**MICHAEL FORREST
**JAMIE S. STEINMETZ

*Not Licensed in Missouri

**Not Licensed in Illinois

March 25, 2011

Mr. Kurtis B. Reeg
Reeg Lawyers, LLC
1 North Brentwood, Suite 950
St. Louis, MO 63105

via email and regular U.S. mail

RE: *Holiday Shores Sanitary District, et al. v. Syngenta, et al.*
Madison County Cause No. 04-L-710

Dear Kurt:

In Syngenta's Response to Plaintiffs' Motion for Sanctions filed this past Monday, March 21, Syngenta claimed that Jayne Thompson & Associates (JTA) was retained to provide "litigation support" related to the Holiday Shores litigation. Syngenta cited and attached a Consulting Services Agreement between JTA and Syngenta as evidence that JTA was in fact retained to provide "litigation support." But the Agreement says nothing of the purpose or scope of JTA's retention—it merely references JTA's proposal to Syngenta dated October 3, 2005 and the caption "Litigation Support" that appears in that proposal.

I am writing to request that you produce the proposal dated October 3, 2005 rather than merely a document citing a caption in that proposal. The question of the purpose and scope of JTA's retention is apparently (in your client's view) important to your client's defense of the pending sanctions motion. Both Dr. Coursey and the University of Chicago are withholding documents involving JTA on the basis of the consulting expert privilege. Your papers also rely on JTA's retention for purposes of "litigation support" to attempt to create a bridge for the consulting expert privilege between Syngenta and Dr. Coursey through JTA. JTA is currently unable to produce any documents due to a fire at their facilities. Syngenta has a copy of this document and it is responsive to numerous of Plaintiffs' outstanding discovery requests.

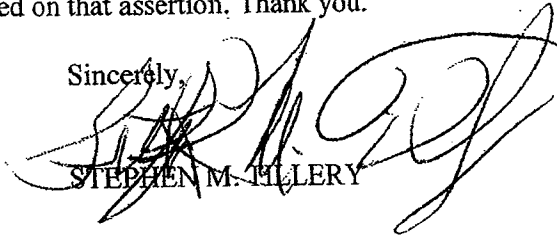
I would appreciate it if you could produce the proposal to us by Monday, March 28 so that we can effectively prepare for the hearing next Friday. If you will not produce the proposal, I ask that you withdraw your unsupported assertion about JTA's retention to provide "litigation

205 North Michigan, Suite 1950
Chicago, Illinois 60601-4269
Tel: 312.641.9750 Fax: 312.641.9751

Mr. Kurt Reeg
March 25, 2011
RE: HSSD v Syngenta
Page 2

support” and the arguments based on that assertion. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Hillery", is written over the typed name. The signature is stylized with a large, sweeping "S" and a distinct "H".

STEPHEN M. HILLERY

SMT:cam

cc: Mr. Michael Pope
Mr. Mark Surprenant
Mr. Christopher M. Murphy