

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT OF ILLINOIS
MADISON COUNTY

HOLIDAY SHORES SANITARY DISTRICT)
Individually and on behalf of all others)
Similarly Situated,)
)
Plaintiff,)
)
v.)
)
SYNGENTA CROP PROTECTION, INC.;)
and GROWMARK, INC.,)
)
Defendants.)

Case No. 2004-L-00710

**DEFENDANT SYNGENTA CROP PROTECTION, LLC'S RESPONSE TO
PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER REGARDING
SHERRY FORD DEPOSITION AND EXHIBITS**

COMES NOW Defendant Syngenta Crop Protection, LLC ("Syngenta"), by and through its attorneys, and for its Response to Plaintiffs' Motion for a Protective Order, states as follows:

1. On August 31, 2009, the Court entered a protective order allowing the designation of certain documents, materials, or information as "confidential," and providing for the use and dissemination of the information, documents, or materials that have been so designated. *See Protective Order filed August 31, 2009 ("Protective Order"), ¶ 1.*

2. The Protective Order designated that any party or other person who produces or supplies information, documents, or other materials used in this action may designate as confidential "any such information, document or material that it reasonably and in good faith believes constitutes or contains Trade Secret information." *Protective Order ¶ 4.*

3. The Protective Order defines "Trade Secret" to include "(a) information, documents, or materials not in the public domain that are so proprietary or competitively

sensitive that their public disclosure is very likely to cause competitive injury, (b) matters that constitute or contain trade secrets pursuant to the applicable law of the State of Illinois, or (c) information, documents or materials that are prohibited or barred from publication/release to the public by any state or federal law.” *Protective Order* ¶ 3.

4. Parties may designate deposition testimony as confidential under the Protective Order “by indicating that fact on the record at the deposition.” *Protective Order* ¶ 5.

5. However, if a party does not designate information as confidential, this does not constitute waiver of an otherwise valid claim for protection. “Inadvertent failure to designate any information pursuant to this Protective Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted within thirty (30) days of the discovery of the inadvertent failure.” *Protective Order* ¶ 13.

6. The Protective Order provides that a party may object in writing to a designation of information as confidential, “specifying the designated material to which the objection is made.” Then, within fifteen (15) days of service of the written objection, the parties should confer concerning the objection. *Protective Order* ¶ 12.

7. On June 9, 2011, Plaintiffs took the video evidence deposition of Sherry Ford. *See transcript of deposition of Sherry Ford, which is filed under seal as Plaintiffs’ Exhibit 1.* Syngenta inadvertently failed to indicate on the record that Ms. Ford’s testimony included confidential information. However, numerous exhibits to the deposition were marked as “Confidential – Subject to Protective Order in Atrazine Litigation,” so assertions of confidentiality regarding portions of the deposition should be and were no surprise to Plaintiffs.

8. On June 24, 2011, counsel for Syngenta reviewed the transcript of Ms. Ford’s testimony and, in compliance with the Protective Order and in a timely manner, counsel sent a

letter to the court reporter designating certain pages and lines of the deposition as confidential under the Protective order: copies were sent to Mr. Stephen Tillery and Ms. Christie Deaton. *See letter from Peter M. Schutzel to Brian Lee of National Client Services dated June 24, 2011, filed as Plaintiffs' Exhibit 2 and incorporated herein.*

9. Later on June 24, 2011, Plaintiffs sent written notice of their objection to the confidential designation of Sherry Ford's deposition testimony. *See letter from Christie Deaton to Kurtis B. Reeg, dated June 24, 2011, filed as Plaintiffs' Exhibit 3 and incorporated herein.*

10. On July 8, 2011, the parties through counsel Kurt Reeg and Christie Deaton met and conferred on a conference call attempting to resolve this dispute, but were unable to do so.

11. No harm or prejudice is or was done to Plaintiffs by Syngenta failing to make an announcement on the record that Ms. Ford's deposition included confidential information. In fact, Plaintiffs had knowledge that the deposition included confidential information through their introduction and use of exhibits marked as "Confidential-Subject to Protective Order in Atrazine Litigation." Moreover, Syngenta made the claim of confidentiality and designated specific pages and lines from the deposition transcript as confidential, well within the thirty (30) days allotted to correct any such inadvertent oversights after discovery of the same. Plaintiff suffered no injury, and, given the nature of the deposition, should have anticipated Syngenta's designation of the testimony as confidential. Indeed, the parties have had an ongoing dispute regarding the confidentiality of various Sherry Ford and other documents over the past four months. To not permit Syngenta to designate portions of the Ford deposition and exhibits as confidential, under these circumstances, would be to elevate form over substance.

12. The Protective Order states that a party objecting to a confidential designation should make that objection in writing and should specify the designated material to which the


objection is made. Plaintiffs have failed to specify the designated material to which their objection is made, instead making a blanket objection that they do not believe any of Ms. Ford's testimony contains information that falls within the definition of confidential information. *See Plaintiffs' Motion for a Protective Order filed on July 12, 2011.* Plaintiffs' objection does not meet the requirement of the Protective Order and, therefore, their motion should be denied.

13. Syngenta reasonably and in good faith believes that the pages and lines of Ms. Ford's deposition that have been designated as confidential constitute or contain Trade Secret information as contemplated under the Protective Order, and therefore should be maintained as confidential.

WHEREFORE, based on the foregoing reasons and authorities, Defendant Syngenta Crop Protection, LLC, respectfully requests that this Court grant an Order deeming the June 9, 2011, deposition testimony and exhibits of Sherry Ford designated by Syngenta as confidential under the Protective Order entered August 31, 2009, and grant such other and further relief as the Court deems just and proper.

Dated: July 14, 2011

Respectfully submitted,
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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of July, 2011, I caused to be served the attached via **hand delivery**, upon the following counsel:

TO: Stephen M. Tillery, Esq.
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