

Murphy

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED

MAR 15 2012

CLERK OF CIRCUIT COURT #77
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

HOLIDAY SHORES SANITARY]
DISTRICT, ET AL,]
Plaintiffs,]
-vs-]
SYNGENTA CROP PROTECTION,]
INC., ET AL,]
Defendants.]

No. 04-L-710

ORDER

The matter before the court is Plaintiff's motion for sanctions regarding Dr. Don Coursey. An evidentiary hearing was conducted on this issue, and considering the submissions, arguments of counsel and being fully advised in the premises, the court finds and orders as follows:

1. During the evidentiary hearing, Plaintiffs' counsel amended the prayer for relief in connection with this motion and asked the Court to make findings of fact based upon the evidentiary record and to withhold the imposition of any relief at this time.

2. Previous representations were made to Judge Crowder concerning the retention date of Dr. Coursey as a Supreme Court Rule 201(b)(3) consulting expert, as reflected in her Order dated September 22, 2010. On August 25, 2010, attorney Ray Bell said, "Dr. Coursey is a consulting expert that was retained by Syngenta with respect to this litigation. He was retained in June of, I believe, 2006 or 2007..." (Report of Proceedings Transcript at 57:3-5) Christopher Murphy, one of Syngenta's attorneys, said on July 19, 2010 that he was "retained specifically in connection with this litigation" in "June of 2006." (Report of Proceedings Transcript at 16:17-22) Accordingly, his retention date was established as "June 2006." Therefore any Coursey materials dated before that date were deemed "clearly discoverable" by Judge Crowder.

3. Syngenta and Dr. Coursey then withheld post-dated June 2006 Coursey documents from disclosure on the basis that they were opinions or work product of a person retained or specifically employed in anticipation of litigation or preparation for trial under Rule 201 (b)(3).

4. After entry of Judge Crowder's Order, counsel for Dr. Coursey and Syngenta demonstrated confusion or difficulty pinpointing the specific retention date. For instance, Coursey's counsel filed a motion [on January 14, 2011] to modify the September 22, 2010 Order asserting the retention date was February 14, 2006. On February 18, 2011 Syngenta's counsel

disclosed to plaintiffs in an email that he was retained on January 9, 2009, and at a hearing before this court on February 23, 2011 Syngenta's counsel stipulated it was January 9, 2009.

5. While it is true that Syngenta hired Coursey in June 2006, and set up the parameters in which they would disclose propriety information to him, his relationship with them at such time was clearly in connection with a public relations initiative encouraged by Jayne Thompson and Associates, a public relations firm hired by Syngenta, and signed off on by Sherry Ford, Syngenta's in-house public relations chief. The nondisclosure agreement he signed did not mention any litigation. He was not hired by attorneys seeking his opinions or work product specifically in anticipation of litigation or preparation for trial as contemplated by Supreme Court Rule 201 (b)(3).

6. Between June 2006 and January 2009, Dr. Coursey collaborated with JTA to develop a working paper or report concerning the economic impact of an atrazine ban. Dr. Coursey did not meet with Syngenta's attorneys [Kurtis Reeg and Mark Surprenant] in this litigation until January 9, 2009.

7. Based upon the public relations origin of the work Coursey did for Syngenta prior to January 2009, the stipulation of Mr. Reeg, and the first date that Dr. Coursey ever met with Syngenta's attorneys in this litigation, Syngenta did not retain Dr. Coursey as a Rule 201(b)(3) litigation consultant until January 9, 2009.

8. Syngenta retained attorney Ray Bell on July 12, 2010 to represent Dr. Coursey, and they have paid for his services.

9. After Plaintiffs filed a Motion for an Evidentiary Hearing regarding Dr. Coursey's retention date, counsel for Syngenta explained that his stipulation establishing January 9, 2009 as the retention date was offered as a compromise to the discovery dispute surrounding Coursey documents. Plaintiffs counter that the earlier representations concerning the retention date were knowingly false, and that the offer of compromise is insincere.

10. The court finds that the meandering retention dates were a product of untimely, superficial and careless analyses of Syngenta's initial relationship with Dr. Coursey as opposed to knowing, willful and contumacious conduct on the part of counsel.

11. The facts concerning Coursey initial relationship mandated counsel for Syngenta and Coursey to establish the consulting expert retention date as of January 9, 2009 because Coursey did nothing prior to that date indicative of a Rule 201 (b)(3) relationship, nor have any documents been produced showing that during those first two and a half years he was in the role of a person retained or specifically employed in anticipation of litigation or preparation for trial. Although the Consulting Services Agreement mentioned "litigation support," that label did not establish, nor did the nature of his work constitute, what is contemplated by Rule 201 (b)(3). The mere fact that someone chooses to label something as such does not make it so, much like labeling emails or documents "Privileged and Confidential Attorney Work Product" if, in fact, it is not.

WHEREFORE, the court makes the foregoing findings of fact, DENIES the plaintiffs' motion for sanctions regarding Dr. Coursey's retention date at this time, and ADMONISHES counsel for Syngenta and Dr. Coursey to be more careful when analyzing claimed privileges in this case and when making in-court representations relative to same.

Clerk to send copies of this order to the parties of record.

Entered:

MAR 15 2012



William A. Mudge
Presiding Judge