

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
MAR 08 2012

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

HOLIDAY SHORES SANITARY]
DISTRICT, ET AL,]
Plaintiffs,]

-vs-

No. 04-L-710

SYNGENTA CROP PROTECTION,]
IN., ET AL,]
Defendants.]

ORDER

The matter before the court is Plaintiff's motion regarding email correspondence copied to Alan Nadel, Syngenta's in-house counsel. The court, after considering the submissions and arguments of counsel, and being fully advised in the premises, finds and orders as follows:

The court has viewed emails such as this these:

"...you have got to cement in your mind that on everyone of these e-mails referring to atrazine you have to copy Alan Nadel, otherwise the e-mail is likely discoverable," and "...I want to remind everyone to be sure to copy Alan Nadel on any e-mails that have to do with atrazine or simazine and place Privileged & Confidential Attorney Client Work Product in the subject line."

Apparently admonishments such as these were not limited to email correspondence that was, in fact, legitimate work-product or attorney-client privileged matters. We know this because Syngenta has produced such emails, for which the court credits counsel for Syngenta.

Also to their credit, the court also has seen evidence that the defendant's in-house counsel has taken steps to correct misstatements about the applicability of work-product privilege and has counseled employees on the use of these "Privileged and Confidential" designations on their emails.

The relief sought by plaintiff is extreme: an order directing Syngenta to produce *all* email correspondence copied to Alan Nadel to date. Considering the nature of this litigation, such an order would require Syngenta to produce thousands of emails – including emails that are legitimate work-product material. Plaintiff also suggests an alternative: produce a separate privilege log for email correspondence to which Alan Nadel is copied. This too, in light of the millions of pages of discovery turned over to date and the voluminous material already subject to *in camera* review, is excessive.

At this point the court directs the defendant to issue a written directive to its employees within 14 days to cease copying all emails that simply mention atrazine to Alan Nadel or other in-house counsel in an effort to avoid the production of otherwise discoverable material. Such written directive shall counsel the employees on the proper use of "Privileged and Confidential" as in-house counsel has done in the past. Only those emails that are in good faith believed to be attorney-work product or attorney-client privileged materials or subject to other recognized privileges shall be so designated. Counsel shall produce a copy of this written directive to the court.

The court further admonishes Syngenta that should further evidence surface that any effort is being made to inappropriately label emails or copy emails to in-house counsel in an effort to create a claim of privilege to otherwise non-privileged materials, the court will consider an order directing all such emails to be produced.

WHEREFORE, the plaintiffs' motion regarding email correspondence copied to Alan Nadel is, at this time, DENIED.

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

Entered:

MAR 08 2012



William A. Mudge, Presiding Judge