

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In re: PARAQUAT PRODUCTS
LIABILITY LITIGATION

Case No. 3:21-md-3004-NJR

MDL No. 3004

This Document Relates to All Cases

ORDER

ROSENSTENGEL, Chief Judge:

Pending before the Court is the Motion for *In Camera* Review and to Compel Production of Defendants' *Hoffman* Expert Materials filed by the MDL Plaintiffs. (Doc. 2707). In September 2021, the court in *Hoffmann v. Syngenta Crop Protection, LLC, et al.*, No. 17-L-517 (Ill. Cir. Ct., 20th Jud. Cir.), entered an order enforcing the protective order and barring the production, in this MDL, of certain materials that had been produced in that case. Specifically, Judge Kevin T. Hoerner ordered Defendants not to disclose Defendants' experts' reports, exhibits thereto, and other reliance materials, as well as the transcripts, videotapes, and exhibits to Defendants' experts' depositions—to the extent these materials “include or otherwise reveal medical, financial, or otherwise personal information about the Plaintiffs (including information about Plaintiffs' use of and exposure to paraquat), the substance of Plaintiffs' experts' opinions or the bases therefor, or Plaintiffs' counsel's theories of the case or trial strategy.” (Doc. 2707-1 at pp. 10-11).

Plaintiffs now ask the Court to enjoin Judge Hoerner's Order enforcing the protective order, perform an *in camera* review of the materials, and compel Defendants to produce all defense expert materials produced or taken in that litigation. Plaintiffs argue that the expert materials are discoverable and not protected attorney work product; therefore, Defendants

should be ordered to immediately produce the expert materials.

In response, Defendants argue that the *Hoffman* order plainly covers Defendants' expert materials. Thus, any relief from the *Hoffmann* order should be directed to the *Hoffmann* court in the first place. By asking this Court to enjoin Judge Hoerner's order, Plaintiffs are effectively asking this Court to act in an appellate capacity over a state court that oversees other Paraquat-related litigation. Defendants also argue their expert materials necessarily disclose "the substance of Plaintiffs' experts' opinions or the bases therefor[e]" and "Plaintiffs' counsel's theories of the case or trial strategy," as they were responsive to the *Hoffman* plaintiffs' experts' opinions. Finally, Defendants assert that the *Hoffman* expert materials are not admissible as party admissions under Federal Rule of Evidence 801(d)(2) and that principles of comity counsel against enjoining the *Hoffman* court from enforcing its order.

In reply, Plaintiffs note they are not parties to the *Hoffman* proceeding, and the protective order has no provision allowing a non-party to seek relief from it. Furthermore, although the *Hoffman* matter remains "open," the case is settled and in a very different procedural posture than when Judge Hoerner issued his order in September 2021. And whether the expert materials are admissible is irrelevant at this point; regardless of whether they are admissible as party admissions, they are discoverable.

Given the current procedural posture of the *Hoffman* case (settled, although not technically "closed"), the reasoning for plaintiffs' counsel in *Hoffman* to seek the protective order in the first instance (to protect *plaintiffs'* counsel's work product), and the fact that the defense expert materials are discoverable, the Court agrees with Plaintiffs that Defendants should produce their expert materials from the *Hoffman* case. In his order, Judge Hoerner

noted that his decision might be different if the case were concluded, as, for all intents and purposes, it now is. (Doc. 2701-1 at p. 8). Additionally, while Judge Hoerner found the expert reports and materials “inextricably intertwined” with the plaintiffs’ theories of the case and trial strategy, he recognized that he was not using the phrase “work product” in its technical sense – plaintiffs’ work product lost its privilege once it was disclosed to Defendants. (*Id.* at n. 2). And while the Court agrees that, in a more perfect world, Judge Hoerner would have provided the relief sought by Plaintiffs, Defendants have presented no legitimate avenue for the non-party Plaintiffs (strangers to the litigation, as Judge Hoerner called them) to seek relief from a protective order entered in a state court. Defendants, of course, could have sought such relief from Judge Hoerner; they chose not to do so.

For these reasons, the Court adopts the analysis provided in its Order of February 8, 2022 (Doc. 935), and further **ENJOINS** Judge Hoerner’s Order enforcing the Protective Order in *Hoffmann v. Syngenta Crop Protection, LLC, et al.*, No. 17-L-517 (Ill. Cir. Ct., 20th Jud. Cir.). The Court will review the materials *in camera* before ordering production to Plaintiffs. Defendants shall produce their expert materials from *Hoffman* to the Court (at ParaquatMDL@ilsd.uscourts.gov) and to the Special Master (at Randi@RandiEllis.com) by **noon (CST) on Tuesday, December 13, 2022**. The Court issues no ruling at this time on the admissibility of Defendants’ expert materials under Federal Rule of Evidence 801(d)(2).

IT IS SO ORDERED.

DATED: December 12, 2022

The image shows a handwritten signature in black ink that reads "Nancy J. Rosenstengel". The signature is written in a cursive style and is positioned above a horizontal line. To the right of the signature, there is a circular seal of the United States District Court for the Northern District of Illinois, featuring an eagle and the text "U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS".

NANCY J. ROSENSTENGEL
Chief U.S. District Judge