

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

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IN RE SYNGENTA AG MIR162 CORN  
LITIGATION

MDL No. 2591

THIS DOCUMENT RELATES TO:

Case No. 14-md-2591 (JWL-JPO)

ALL CASES

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**STATE OF MINNESOTA**

**DISTRICT COURT**

**COUNTY OF HENNEPIN**

**FOURTH JUDICIAL DISTRICT**

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In re: Syngenta Litigation

File No. 27-cv-15-3785  
Hon. Thomas M. Sipkins  
Hon. John B. Van de North, Jr. (Ret.)  
Other Civil

This Document Relates to ALL ACTIONS

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**JOINT DISCOVERY ORDER REGARDING PLAINTIFFS'  
MOTIONS TO COMPEL J. THOMAS CARRATO TO  
PRODUCE SUBPOENAED DOCUMENTS**

*Jointly Issued by:*

**U.S. MAGISTRATE JUDGE JAMES P. O'HARA  
SPECIAL MASTER JOHN B. VAN DE NORTH, JR.**

The undersigned judicial officers in the above-captioned matters have before them motions by Plaintiffs in the Federal MDL and Minnesota State Action to compel the production of documents. The documents have been requested in subpoenas directed to the Syngenta Defendants' expert witness, J. Thomas Carrato. Related motions to quash the subpoenas by non-party Monsanto Company are not addressed at this time.

Pursuant to the Coordination Orders issued by the Courts in the captioned litigation, the undersigned judicial officers have determined that the procedures outlined herein will assist each of them to more efficiently address Plaintiffs' motions to compel, which are pending in their respective jurisdictions. The motions are substantially similar and present the same issues for resolution. Mr. Carrato and his former employer and non-party, Monsanto Company, have raised objections to the production of documents by Mr. Carrato in response to the Minnesota and MDL subpoenas. The objections are based, in part,<sup>1</sup> upon the assertion that the documents in question are protected from discovery by an attorney-client privilege belonging to Monsanto. At the heart of the controversy are 184 individual documents (consisting of approximately 2,120 pages),<sup>2</sup> which relate to 29 document production requests contained in the Minnesota (10) and MDL (19) subpoenas.

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<sup>1</sup> Objections by Monsanto and Mr. Carrato based on confidentiality are not addressed herein. Similarly, Plaintiffs' arguments that Monsanto and Mr. Carrato have waived all objections based on untimeliness and incomplete privilege logs will be addressed in future orders.

<sup>2</sup> Originally, Mr. Carrato's privilege logs contained 187 individual documents. However, recognizing that the attorney-client privilege rests with Monsanto as the client, rather than Mr. Carrato as the attorney, Magistrate Judge O'Hara directed Monsanto to produce its own privilege log for the documents withheld by Mr. Carrato on or before March 6, 2017. ECF No. 2938. Monsanto produced its privilege log in the MDL Action on March 6, 2017, and, in doing so, did not claim privilege over Carrato Document Nos. 122, 131, and 132.

In his Order Regarding *In Camera* Review dated February 27, 2017, ECF No. 2938, Magistrate Judge O'Hara directed Monsanto and Mr. Carrato to comply with a process by which they would provide him with documents identified in Mr. Carrato's privilege log by March 2, 2017. Magistrate Judge O'Hara's process focused on Document Request Nos. 1-18 in the MDL Carrato subpoena. By this Joint Order, Magistrate Judge O'Hara's procedure is extended to include Document Request Nos. 1-18 in the Minnesota Carrato subpoena. By letter dated March 6, 2017, Merri Baldwin, counsel for Mr. Carrato, confirmed that there are no documents listed on Mr. Carrato's privilege logs that are specific to the three (now two, Nos. 25 and 28) requests at issue in the Minnesota Plaintiffs' motion to compel.

The deadlines imposed by Magistrate Judge O'Hara in his February 27, 2017 Order continue to be in effect. Counsel for Mr. Carrato agreed to and did produce additional documents required to be submitted by this Order, relating to the Minnesota subpoena, to Special Master Van de North on March 6, 2017. Monsanto shall submit its own privilege log covering all of the documents at issue to Special Master Van de North by 5:00 p.m. on Wednesday, March 8, 2017.

As to any documents submitted pursuant to Magistrate Judge O'Hara's February 27, 2017 Order or this Joint Order, for which Monsanto continues to assert attorney-client privilege protection, counsel will engage in a meaningful, in-person meet-and-confer process as follows:

An in-person meet-and-confer will be conducted on March 10, 2017, at or around 11:00 a.m. in the Courtroom of the Hon. Thomas Sipkins at the Hennepin County Courthouse, Minneapolis, Minnesota. Counsel for Plaintiffs, Syngenta, Monsanto Company and Mr. Carrato shall participate. On March 6, 2017, Special Master Van de

North was advised that counsel for all parties would be available at this time and place for purposes of the meet-and-confer.

The undersigned request that counsel utilize a process similar to that outlined in a March 31, 2008 discovery order issued by former U.S. District Court Magistrate Judge Erickson in *Cox v. Zurn Pex, Inc.*, No. 07-3652 (ADM/RLE) (D. Minn.), wherein the parties were directed as follows:

[T]he only means of providing the detail necessary to a determination concerning the privileged status of a particular document, without expensive, labor-intensive, and voluminous documentation, is to require the party claiming the privilege to sit on one side of a table, with the challenging party on the other, in order to allow the claiming party to hold the document up, with its back facing the challenging party, so the claiming party can detail the document's author, date, general subject matter, and the specific reasons why the document is privileged. As the Advisory Committee Notes for the 1993 Amendment of Rule 26(b)(5) optimistically reflect, "[p]roviding information pertinent to the applicability of the privilege or protection should reduce the need for in camera examination of the documents."

Order at 22, *Cox v. Zurn Pex, Inc.*, No. 07-3652 (ADM/RLE) (D. Minn. Mar. 31, 2008).

The parties are also instructed to be particularly mindful of Magistrate Judge O'Hara's January 27, 2017 Discovery Order, ECF No. 2835, and the rulings issued regarding Monsanto's assertion of attorney-client privilege objections during the course of Mr. Carrato's two-day deposition on January 28-29, 2017, in Kansas City, Missouri. It is the expectation of the undersigned that this meet-and-confer will serve to narrow the number of documents and issues that may remain for any *in camera* review that may be separately or jointly undertaken by Magistrate Judge O'Hara and Special Master Van de North.

Finally, the parties are ordered to notify both of the undersigned by joint submission on or before March 13, 2017, which documents remain in dispute, if any, following the parties' meet-and-confer.

BY THE COURT:

Dated: March 7, 2017

*s/James P. O'Hara*  
Hon. James P. O'Hara  
United States Magistrate Judge  
Federal MDL

Dated: March 7, 2017

*s/John B. Van de North, Jr.*  
Hon. John B. Van de North (Ret.)  
Special Master  
Minnesota State Action