

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: E. I. DUPONT DE NEMOURS  
AND COMPANY C-8 PERSONAL  
INJURY LITIGATION

Case No. 2:13-md-2433

JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Elizabeth P. Deavers

This document relates to: **ALL ACTIONS**

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**AGREED PROTECTIVE ORDER**

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Plaintiffs and Defendant E. I. du Pont de Nemours and Company ("Defendant") (Plaintiffs and Defendant individually a "Party" and collectively, the "Parties"), through their attorneys, have stipulated and agreed to the entry of a protective order governing the production and handling of confidential information in these MDL proceedings (the "MDL Litigation"). The Court, having reviewed the agreement and stipulations of the Parties, finds that good cause supports the entry of such an order, and that justice so requires.

Accordingly, pursuant to Rule 26 of the Federal Rules of Civil Procedure, it is hereby ORDERED that all information, testimony, documents and other things, including the substance and content thereof produced, deemed produced under the

provisions of this Order, or otherwise disclosed by any party or non-party in discovery in this MDL Litigation shall be subject to the terms and provisions set forth below:

1. The Parties recognize that each may possess certain information and materials subject to production or disclosure in this action that may constitute, contain or reflect proprietary, confidential, and/or trade secret information ("Confidential Information"). Any Party may, in accordance with this Order, designate as confidential any deposition testimony upon oral or written examination, exhibits, documents produced in discovery, affidavits, or any other materials (including electronic or digital information) that constitutes, contains or reflects Confidential Information, as defined below. Any document or thing so designated may not thereafter be disclosed or made available to anyone other than those individuals or entities described below, and then only in strict accordance with the terms of this Order. This Order shall be binding on each of the Parties and their counsel upon signature of their respective counsel.

2. As used herein, "Confidential Information" shall include only the following:

(a) information that the Party producing it (a "Producing Party") has reviewed and reasonably and in good faith believes is subject to protection as a trade secret or other confidential research, development, or commercial information within the meaning of Rule 26(c)(1)(G); or

(b) information that is not in the public domain that reveals the specific, individual identity of any person in connection with their particular medical status, history, disease, or condition; provided, however, that none of the underlying data with respect to such medical status, history, disease, or condition shall be deemed "Confidential Information"

under this Protective Order, to the extent that information does not reveal the specific identity of any particular individual.

3. All documents or other items containing Confidential Information produced or disclosed in this MDL Litigation pursuant to this Order other than those defined as "Prior Action Documents" in paragraph 4 below shall be marked, labeled or stamped on each page with the legend "Confidential Subject to MDL Protective Order," or similar language, or where it is impossible or impractical to so stamp a particular item, shall be attached to another document so marked that reasonably describes the designated information. If a Party allows a non-Prior Action Document collection to be reviewed for tagging of documents requested for production, then the Confidentiality designation may be made after allowing counsel for the Party or Parties to whom the production will be made (a "Receiving Party") to review the materials being produced without waiver of any protections of Confidential Information provided in this Order; provided, however, that when any such tagged/requested documents are then provided to the Receiving Party, the Producing Party must designate them at the time of such production in order to qualify them for protection as Confidential Information under the terms of this Order.

4. Any and all documents or other material produced and/or disclosed by any Party or third party in *Tennant, et al. v. E.I. du Pont de Nemours & Co., Inc.*, Case No. 6:99-0488 (S.D. W.Va.); *Leach, et al. v. E.I. du Pont de Nemours & Co.*, Case No. 010-C-608 (Cir. Ct. W.Va.); *Rowe, et al., v. E.I. du Pont de Nemours and Company*, Case No. 06-1810 (D. N.J.); *Scott v. E.I. du Pont de Nemours & Company*, Case No. 06-3080 (D. N.J.) and/or *Rhodes, et al. v. E.I. du Pont de Nemours & Co.*, Case No. 6:06-0530

(S.D. W.Va.) (collectively the "Prior Action Documents") shall be deemed to have been produced by such Party or third party (the "Prior Producers") in this MDL Litigation. Any Prior Action Documents that were previously designated, stamped, and/or marked as confidential by any such Prior Producer pursuant to the protective order(s) entered in such matter(s), and for which such Prior Producer has not withdrawn such designation, or had the designation overruled by any Court charged with overseeing the original production of the particular Prior Action Documents, shall be considered Confidential Information under the terms of this Order and shall be treated as such by the Parties. In addition, all such Prior Action Documents shall remain subject to the provisions of the respective protective orders entered in those prior actions (the "Prior Action Orders"), which shall remain in full force and effect and shall in no way be superseded or nullified by the entry of this Order, except that no person shall assert or argue that production or use of the Prior Action Documents in the MDL Litigation is a violation of any such Prior Action Orders or this Protective Order because of any person not signing the "attachment A" or similar document required under any such Prior Action Orders, if the person has signed the Exhibit A to this protective Order in this MDL Litigation, or because of any alleged obligation to return any such Prior Action Documents under the Prior Action Orders at the conclusion of any of the Prior Actions.

5. Nothing in this Protective Order shall permit any party to designate any portion of any of the Prior Action Documents as "Confidential Information" or to assert/reassert a confidentiality claim over any such Prior Action Documents if:

- (a) the Prior Action Documents were not already designated by the Prior Producer (or other authorized designating party) as "Confidential

Information” (or the equivalent designation) under the Prior Action Orders applicable to the Prior Action in which the document(s) was/ were originally produced;

- (b) the confidentiality designation for such Prior Action Documents had been withdrawn by the Prior Producer during one or more of the Prior Actions; or
- (c) a Court overseeing a Prior Action in which the document(s) was/ were originally produced overruled the confidentiality designation for such Prior Action Documents.

6. To the extent that documents or materials containing Confidential Information are provided in their native electronic format, such documents or materials may be designated as Confidential Information by providing written notice of such designation, and the designation of any storage media shall extend to the contents of such storage media. If the native electronic format is electronically named or numbered, such labeling shall include the Confidential designation to the extent reasonably possible and appropriate.

7. Deposition testimony and, other pretrial testimony, the transcripts thereof and exhibits thereto may be designated as Confidential Information pursuant this Order on the record at the time the testimony is given, at which time such testimony shall be marked “Confidential” by the court reporter and shall be subject to the full protection of this Order. If testimony is not so designated at the time it is given, but counsel for a party subsequently determines that it qualifies as Confidential Information, counsel may, within no later than thirty (30) days after receipt of the transcript containing such Confidential Information, notify the Parties as to which specific portion(s) of the



transcript contains such Confidential Information, specifying page and line numbers, in which case any such portion(s) specifically designated as Confidential Information shall at that time be treated as Confidential Information under this Order. Until expiration of the aforementioned 30 day period, all deposition and other pretrial transcripts, as well as the information contained therein, shall be deemed Confidential Information under this Order. The cover page of any transcript containing testimony or exhibits which have been designated as Confidential Information shall include a prominent designation "Contains Confidential Information, Subject to Protective Order," or equivalent language.

Where a non-Prior Action Document is produced that has been provided to a regulatory agency and the document as provided to that agency and to the Receiving Party in this MDL Litigation by the Producing Party is clearly stamped or marked as subject to a designation of "business confidential" or similar claim expressly using the term "confidential," such document shall be treated as Confidential Information under this Order, provided, however, that if a Receiving Party believes any such designation is inappropriate, they may request the Producing Party to consider withdrawing the designation pursuant to the procedure set forth in Paragraph 17 of this Order.

8. Material designated as Confidential Information pursuant to this Order shall be used by a Party or person receiving such material solely for purposes of this litigation and shall not be used for any business, financial, or other purposes whatsoever. Confidential Information may not be electronically stored, distributed, disseminated, transmitted, or maintained in any location accessible to any person or entity other than the Parties and attorneys of record and any others specifically listed below. Under no circumstances, other than those specifically provided for in this or a

subsequent Order of the Court, shall the persons receiving Confidential Information disclose it to persons other than the following:

- (a) The Parties in the cases involved in this MDL Litigation who have signed the Confidentiality Agreement set forth in Exhibit A to this Protective Order (hereinafter "Exhibit A");
- (b) counsel representing a Party or Parties in the cases involved in this MDL Litigation (this includes paralegals, secretaries, and other staff and by signing this Order, counsel acknowledges and agrees that they will be responsible for their staff's awareness of and compliance with the terms of this Order);
- (c) Experts, consultants, and contractors (including their employees) retained by the Receiving Party or its counsel to assist in one or more cases involved in this MDL who have signed Exhibit A;
- (d) Witnesses and prospective witnesses in one of more cases involved in this MDL Litigation where counsel believe they have a good faith need to know about the information and where the witness or prospective witness has been advised of the existence of this Order;
- (e) court reporters and their staff recording proceedings in one of more cases involved in this MDL Litigation, provided that they shall first be made aware of the existence and terms of this Order;
- (f) the Court and court staff and personnel; and
- (g) Jurors in this action.

9. The provisions of this Order shall not apply to any documents, data, other information or material that is in the rightful possession of another Party to this Order or is otherwise in the public domain without the violation of a confidentiality or protective order.

10. Each person given access to Confidential Information shall treat it as confidential and shall take all actions necessary to preserve the confidentiality of the information.

11. To the extent necessary to fully protect Confidential Information being provided by a Producing Party, any copies, notes, summaries or exhibits containing, or including Confidential Information shall be designated as "Confidential" by the person generating or creating same and shall be subject to the provisions of this Order.

12. A party may file or submit Confidential Information to the Court, under seal, in connection with any pleading, motion, or other paper filed, but only as permitted by and in accordance with this Court's Local Rules, including Local Rule 79.3. In the event that such a filing is made including Confidential Information, only the specific portion of the document(s) containing such Confidential Information, whether in the form of a pleading, motion, brief, exhibit or other paper, shall be filed and/or submitted under seal, and shall be placed in a sealed envelope bearing the caption of the case and title of the document and which include a statement in the following form:

This envelope is sealed pursuant to Order of the Court and contains confidential information subject to such Order. This envelope is not to be opened or its contents revealed except to counsel or authorized personnel of record or by subsequent Order of this Court.

All such sealed materials so filed shall be maintained by the Clerk of the Court separate from the public records in this action and shall be released only upon further Order of this Court but the public docket shall reflect the filing of the material(s) and contain all non-sealed portions of the filing.

13. A party may, subject to the Federal Rules of Evidence and any objections by the producing party, use Confidential Information at a trial or public hearing in this action only after the Producing Party or its counsel is given reasonable advance written notice of not less than 5 business days prior to such use to allow the Producing Party or its counsel to move for a supplemental protective order or other conditions, if necessary;



provided that the Producing Party and the other Parties involved may by agreement, or the Court may by order (so long as the Producing Party has a reasonable opportunity to be heard) excuse or shorten this 5 business day period. If an objection is raised, Confidential Information shall not be disclosed until the Court resolves the dispute or the Parties otherwise reach agreement regarding the disclosure of the Confidential Information.

14. At the final conclusion of this MDL Litigation, including any and all appeals, and only upon request of the Producing Party made within a reasonable time after such conclusion (the "Request"), all documents or other materials containing Confidential Information shall be either destroyed or returned to counsel of record for the Producing Party, except for any documents or other materials filed with the Court or otherwise admitted into the record of this case or which any Party is otherwise instructed and/or ordered by the Court to maintain. If any of the Prior Actions are still pending at the time of the final conclusion of the MDL Litigation, a counsel or a Receiving Party involved in such Prior Action may keep Confidential Information produced in such Prior Action in accordance with the terms of the Prior Action Orders. The Producing Party may in the Request specify whether it wishes the documents or other materials containing Confidential Information to be returned or destroyed, and if it specifies return, the Producing Party shall be responsible for the expense of such return. The Receiving Party need not follow the specification and may elect itself whether to return or destroy the documents and other materials, but if the Receiving Party elects to return rather than destroy, then the Receiving Party shall be responsible for the expense of such return, unless the Parties agree otherwise. If a Receiving Party

destroys (either upon its own election or the specification of the Producing Party) rather than returns, then the Receiving Party must provide to the Producing Party an affidavit from an officer or counsel of record stating that the Receiving Party has destroyed all documents and materials containing Confidential Information, including all copies thereof.

15. In the event that counsel for a Producing Party notifies a Receiving Party in writing within five (5) business days of the Producing Party's discovery that it has inadvertently produced a document containing either Confidential Information (subject to the limitations of paragraph 5 of this Order) or information subject to an alleged privilege of the Producing Party (subject to the limitations of paragraph 16 of this Order) (the "Subject Material"), the Receiving Party shall notify the Producing Party within ten (10) business days whether it will agree to return or (at the Receiving Party's discretion) destroy the Subject Material (the "Notice"). If the Receiving Party does not agree to return or destroy the Subject Material, the Producing Party may within no more than ten (10) business days of receipt of the Notice file a motion to compel the return or destruction of the Subject Material. The Receiving Party shall continue to hold as Confidential Information and not disclose to anyone the Subject Material, or the contents thereof, until the expiration of the period for the Producing Party to file a motion to compel, or if one is filed, until the Court resolves the motion. If the Producing Party does not file a motion to compel within the applicable ten (10) business day period, the Subject Material shall return to the status quo as it existed prior to the Producing Party giving notice of alleged inadvertent production. The burden shall be on the Producing Party to establish that the Subject Material was protected from discovery and

inadvertently produced. Nothing in this Order relieves any Party or counsel of any obligation under applicable ethical rules to provide notification of a potential inadvertent production.

16. Nothing in this Order shall authorize or permit any Party to assert or allege in this MDL Litigation any inadvertent or otherwise inappropriate or unintentional production for any reason based on privilege, work product, immunity, or other such protection from discovery (hereinafter "Privilege Claim") with respect to any portion of the Prior Action Documents, if

(a) the Prior Action Documents were actually attached to, listed, or otherwise specifically identified in court filings, or hearings in one or more Prior Actions and the Prior Producer did not assert any Privilege Claim over such documents during any such Prior Action;

(b) the Privilege Claim had been withdrawn by the Prior Producer during one or more of the Prior Actions; or

(c) a court overseeing the Prior Action in which the document(s) was/were produced overruled the Privilege Claim.

The Parties may produce documents indicating that they were copied or otherwise transmitted to in-house or outside attorneys or claim representatives but which the Producing Party nonetheless does not consider privileged based on the content of the documents. The Parties agree that the decision to produce such documents does not in and of itself constitute a waiver of, or an intent to waive, the attorney-client privilege or work product protection as to the subject matter of those documents or communications, or as to the Party's other communications with

attorneys. Nothing in this Order shall permit a Party to assert a claim of privilege or work product protection over a Prior Action Document if a court overseeing the Prior Action already rejected such claim.

17. If a Party receiving information, documents or other materials designated as Confidential contests and wishes to challenge such designation, such Party shall give notice to counsel for the Producing Party, and the Parties shall promptly and in good faith use their best efforts to resolve any dispute over the designation. In the event the Parties are unable to resolve such dispute within ten (10) business days of notice to the Producing Party of such challenge, or the Producing Party does not respond within such time, the Party challenging the designation may request resolution by the Court, and the burden shall be on the Producing Party to establish to the satisfaction of the Court that the designation is proper. Pending resolution of the Parties' dispute over a confidential designation, the document and/or information in question shall be treated as Confidential Information under the terms of this Order.

18. If any government entity or agency or third party requests Confidential Information through subpoena or otherwise from a person other than the Party originally producing the Confidential Information, the person receiving the request shall immediately notify the Producing Party. The Producing Party shall have standing to object to the request. If the person receiving the request is compelled to produce Confidential Information to the government or any agency thereof, the person must follow the governmental entity's or agency's rules for maintaining the confidentiality of such material. If the person receiving the request is compelled to produce Confidential

Information to a non-governmental third party, the receiving party will be required to take appropriate steps to maintain the confidentiality of such information or material.

19. After prior agreement of the Parties to this action, third parties that produce Confidential documents or information in this MDL Litigation may obtain protection under this Order by agreeing to the terms of this Order and executing Exhibit A to this Order.

20. Nothing in this Order, or any action taken in compliance with it, shall (a) operate as an admission against interest by any party, (b) prejudice in any way the right of any Party to seek a determination that Confidential Information should or must be disclosed with respect to any non-Prior Action Documents,, (c) prejudice in any way the right of a Party to seek a determination that any Confidential Information is required to be disclosed with respect to any non-Prior Action Documents, or (d) prejudice in any way the right of any Receiving Party to seek a determination that Confidential Information was not properly designated with respect to any non-Prior Action Documents. This Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any party or person with respect to any Confidential Information.

21. Nothing in this Order shall restrict a Producing Party's ability to control, manage, or disseminate its own internal documents or information (i.e., documents and information that the Producing Party produced), even if such material is or would otherwise be designated as Confidential Information under this Order.

22. This Order shall continue to be effective following termination of this case, and the Court shall retain jurisdiction with respect to this Order after the final judgment



or dismissal of this case. For purposes of enforcement and other matters related to this Order, each person given access to Confidential Information will be deemed to have agreed and will be subject to the jurisdiction of this Court and to the jurisdiction of the state and federal courts where such person received the Confidential Information for purposes of enforcement.

23. This Order may be modified or amended for good cause shown, after appropriate notice and opportunity to be heard is provided to the affected Parties, if and when the Court believes the interests of justice require modification.

**IT IS SO ORDERED**

Date: 7-11-2013

  
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**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**

  
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**ELIZABETH A. PRESTON DEAVERS**  
**UNITED STATES MAGISTRATE JUDGE**

**APPROVED AND AGREED:**

**/s Michael A. London**

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**EXHIBIT A**

**I. CONFIDENTIALITY DECLARATION**

I hereby declare that I am to receive information, designated as “Confidential Information” pursuant to the terms of the Agreed Protective Order entered in the case styled E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation (S.D. Ohio – Judge Sargus). I further declare that I have read a copy of the Agreed Protective Order and agree to be bound by all of its terms. If I am signing on behalf of a Party or entity that is not an individual, I declare that I have authority to bind such Party or entity to the terms of the Agreed Protected Order and that such Party’s or entity’s employees also shall be bound by all of its terms. I specifically acknowledge the obligation to protect, and to possibly return or destroy all “Confidential Information” in accordance with the Order, and I hereby submit to the jurisdiction of the Southern District of Ohio for the purpose of any proceeding to enforce the terms of the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Declarant’s Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code