

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 EVANSVILLE DIVISION

EVANSVILLE GREENWAY AND REMEDIATION TRUST, a Qualified Settlement Trust,)	
)	
Plaintiff,)	
)	
v.)	3:07-cv-66-DFH-WGH
)	
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY, INC., an Indiana Corporation; et al.,)	
)	
Defendants.)	
<hr/>		
EVANSVILLE GREENWAY PRP GROUP,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
GENERAL WASTE PRODUCTS, et al.,)	
)	
Third-Party Defendants.)	

ORDER GRANTING MOTION TO COMPEL

This matter is before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, on the Motion to Compel filed by defendants Mead Johnson Nutrition Company and Heritage Coal Company on April 15, 2009. (Docket Nos. 417-18). A Memorandum of Law in Opposition to Motion to Compel was filed by plaintiff, Evansville Greenway and Remediation Trust, on May 4, 2009. (Docket Nos. 432-34). A Reply in Support of Motion to Compel and Request for Oral Argument were filed on May 13, 2009. (Docket Nos. 437-38).

The Magistrate Judge, being duly advised, now **GRANTS** the Motion to Compel and orders that the Settlement Agreement and exhibits and attachments at issue be disclosed subject to a protective order.¹

In this case, the Settlement Agreement at issue was executed by Mr. Trockman and General Waste Products, Inc., third-party defendants in this case. Mr. Trockman has at various times in this and prior litigation given statements concerning his memory of activities at General Waste Products. Some of these statements and depositions occurred before the signing of the Settlement Agreement and some occurred thereafter. Under Rule 408(b), evidence not otherwise admissible as offers of compromise may be admitted into evidence if necessary to prove a witness's bias or prejudice, among other things. While it is far from clear that this matter will be admitted into evidence, for purposes of this discovery order the agreement must be disclosed because of the existence of a permitted use arising out of the execution of the document. (Specifically, inquiry as to whether the execution of the Settlement Agreement may have a bearing on Mr. Trockman's bias or prejudice.) In addition, issues remain before this court concerning the standing of the Trust to bring this action. Those issues cannot be completely resolved by the court without the parties' opportunities to understand the existence of the Trust and its relationship to the controversy at issue. Disclosure of the Settlement Agreement is necessary for these purposes.

¹The Request for Oral Argument (Docket No. 438) is **DENIED**.

The Settlement Agreement is a confidential document entitled to some protection from disclosure to the general public, at least at this stage of the litigation. Therefore, the following protective order shall issue:

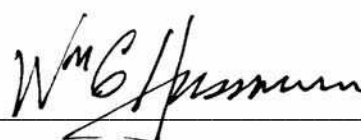
Copies of the protected Settlement Agreement shall be produced to the attorneys who are counsel of record in this matter only. Those attorneys shall not copy or otherwise disseminate the Settlement Agreement to any other party or person without the express permission of the court. Counsel shall be entitled to summarize the contents of the document and to question witnesses necessary to explore the Trust's existence, and to cross-examine Mr. Trockman, as necessary. In the event any party wishes to file a motion with the court which requires examination of that document, the document shall be filed under seal. As required in this Circuit, a member of the public may challenge the necessity of sealing.

The Settlement Agreement and exhibits and attachments thereto shall be provided to defendant's counsel within seven (7) days of the date of this Order.

You are hereby notified that the District Judge may reconsider any pretrial matter assigned to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) where it is shown that the order is clearly erroneous or contrary to law.

SO ORDERED.

Dated: June 9, 2009



WILLIAM G. HUSSMANN, JR.
Magistrate Judge

Electronic copies to:

Scott R. Alexander
TAFT STETTINIUS & HOLLISTER LLP
salexander@taftlaw.com

John P. Arranz
SWANSON MARTIN & BELL
jarranz@smbtrials.com

Stephen J. Axtell
THOMPSON HINE LLP
steve.axtell@thompsonhine.com

Jennifer C. Baker
HUNSUCKER GOODSTEIN & NELSON
jbaker@hgnlaw.com

Brian C. Bosma
KROGER GARDIS & REGAS, LLP
bcb@kgrlaw.com

Jayna Morse Cacioppo
TAFT STETTINIUS & HOLLISTER LLP
jcacioppo@taftlaw.com

Gregory P. Cafouros
KROGER GARDIS & REGAS, LLP
gpc@kgrlaw.com

Robert R. Clark
TAFT STETTINIUS & HOLLISTER LLP
rclark@taftlaw.com

Michael E. DiRienzo
KAHN DEES DONOVAN & KAHN
mdirienzo@kddk.com

Hallie Miller Fahey
Troutman Sanders LLP
hallie.fahey@troutmansanders.com

Andrew Rudolph Falk
KROGER GARDIS & REGAS LLP
arf@kgrlaw.com

Maria V. Gillen
TENNESSEE VALLEY AUTHORITY
mvgillen@tva.gov

Adam T. Goebel
STOLL KEENON OGDEN PLLC
adam.goebel@skofirm.com

Michael D. Goodstein
Hunsucker Goodstein & Nelson PC
mgoodstein@hgnlaw.com

Edward S. Griggs
BARNES & THORNBURG LLP
sean.griggs@btlaw.com

Timothy A. Haley
BARNES & THORNBURG LLP
thaley@btlaw.com

Elizabeth Schroer Harvey
SWANSON MARTIN & BELL LLP
eharvey@smbtrials.com

Samuel D. Hinkle IV
Stoll Keenon Ogden PLLC
sam.hinkle@skofirm.com

David L. Jones
JONES WALLACE, LLC
djones@joneswallace.com

Jody E. Kahn
SWANSON MARTIN & BELL LLP
jkahn@smbtrials.com

G. Daniel Kelley Jr.
ICE MILLER LLP
daniel.kelley@icemiller.com

Thomas A. Knoth
THOMPSON HINE LLP
tom.knoth@thompsonhine.com

John Milton Kyle III
BARNES & THORNBURG LLP
john.kyle@btlaw.com

Douglas W. Langdon
FROST BROWN & TODD, LLC
dlangdon@fbtlaw.com

Kyle Andrew Lansberry
LEWIS & WAGNER
klansberry@lewiswagner.com

Richard J. Lewandowski
Whyte Hirschboeck Dudek S.C.
rlewandowski@whdlaw.com

Michael John Maher
SWANSON MARTIN & BELL
mmaher@smbtrials.com

Stacey H. Myers
Hunsucker Goodstein & Nelson PC
smyers@hgnlaw.com

Michael Orville Nelson
HUNSUCKER, GOODSTEIN & NELSON
mnelson@hgnlaw.com

Reed W Neuman
NOSSAMAN, LLP/ O'CONNOR &
HANNAN
rneuman@nossaman.com

Victoria L. Nilles
THOMPSON HINE LLP
victoria.nilles@thompsonhine.com

Anthony W. Overholt
FROST BROWN TODD LLC
aoverholt@fbtlaw.com

Tina Marie Richards
BAKER & DANIELS - Indianapolis
tina.richards@bakerd.com

Robert W. Rock
JONES WALLACE LLC
rrock@joneswallace.com

Keith E. Rounder
TERRELL BAUGH SALMON & BORN
krounder@tbsblaw.com

Ross E. Rudolph
RUDOLPH FINE PORTER & JOHNSON
rer@rfpj.com

James P. Ryan
NOSSAMAN, LLP/O'CONNOR &
HANNAN
jryan@nossaman.com

Douglas B. Sanders
BAKER & McKENZIE LLP
douglas.b.sanders@bakernet.com

G. Michael Schopmeyer
KAHN DEES DONOVAN & KAHN
mschopmeyer@kddk.com

John A. Sheehan
HUNTON & WILLIAMS LLP
JSheehan@hunton.com

Katherine L. Shelby
BINGHAM MCHALE LLP
kshelby@binghammchale.com

Donald M. Snemis
ICE MILLER LLP
donald.snemis@icemiller.com

William T. Terrell
TENNESSEE VALLEY AUTHORITY
wtterrell@tva.gov

Kevin Morris Toner
BAKER & DANIELS - Indianapolis
kevin.toner@bakerd.com

John William Watson III
BAKER & McKENZIE LLP
john.w.watson@bakernet.com

Thomas E. Wheeler II
FROST BROWN TODD LLC
twheeler@fbtlaw.com

Kenneth Thomas Williams II
STOLL KEENON & OGDEN PLLC
kt.williams@skofirm.com

David E. Wright
KROGER GARDIS & REGAS LLP
dew@kgrlaw.com