

PHILADELPHIA COURT OF COMMON PLEAS  
 PETITION/MOTION COVER SHEET

CONTROL NUMBER:

090354

(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

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ASSIGNED TO JUDGE:

ANSWER/RESPONSE DATE:

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AUGUST

Term, 2005

Month

Year

001918

No.

William H. Brendley, Jr., Ph.D.

Name of Filing Party:

Rohm and Haas Company

vs.  
 Rohm & Haas Co.

(Check one)  Plaintiff  Defendant  
 (Check one)  Movant  Respondent

INDICATE NATURE OF DOCUMENT FILED:

Has another petition/motion been decided in this case?  Yes  No

Is another petition/motion pending?  Yes  No

If the answer to either question is yes, you must identify the judge(s):

The Honorable Mark I. Bernstein

Petition (Attach Rule to Show Cause)  Motion  
 Answer to Petition  Response to Motion

TYPE OF PETITION/MOTION (see list on reverse side)

PETITION/MOTION CODE  
 (see list on reverse side)

Response to Plaintiff's Emergency Motion to Restrain Defendant's  
 Ex Parte Contacts with Class Members

MTEMG

I. CASE PROGRAM

Is this case in the (answer all questions):

A. COMMERCE PROGRAM

Name of Judicial Team Leader: \_\_\_\_\_

Applicable Petition/Motion Deadline: \_\_\_\_\_

Has deadline been previously extended by the Court?

Yes  No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year \_\_\_\_\_

Name of Judicial Team Leader: \_\_\_\_\_

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C. NON JURY PROGRAM

Date Listed: \_\_\_\_\_

D. ARBITRATION PROGRAM

Arbitration Date: \_\_\_\_\_

E. ARBITRATION APPEAL PROGRAM

Date Listed: \_\_\_\_\_

F. OTHER PROGRAM: Class Action

Date Listed: August 15, 2005

II. PARTIES

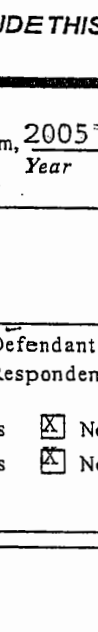
(Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

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 Dennis R. Suplee, Esquire  
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 1500 Walnut Street, 18th Floor  
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 Attorneys for Plaintiffs

III. OTHER

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

  
 (Attorney Signature/Unrepresented Party)

9/14/05

(Date)

Jennifer A. L. Battle (86765)

(Print Name)

(Attorney I.D. No.)

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SCHNADER HARRISON SEGAL & LEWIS LLP

By: Ralph G. Wellington (I.D. No. 10068)  
Dennis R. Suplee (I.D. No. 03336)  
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Attorneys for Defendant  
Rohm and Haas Company

WILLIAM H. BRENDLEY, JR., Ph.D.,  
On behalf of himself and all others similarly  
situated,

Plaintiff,

v.

ROHM & HAAS CO.,

Defendant.

COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

CLASS ACTION

AUGUST TERM, 2005  
NO. 001918

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**DEFENDANT ROHM AND HAAS COMPANY'S OPPOSITION  
TO PLAINTIFF'S EMERGENCY MOTION TO RESTRAIN  
DEFENDANT'S *EX PARTE* CONTACTS WITH CLASS MEMBERS**

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Defendant Rohm and Haas Company, by and through its counsel, opposes plaintiff's emergency motion to restrain its contacts with its employees, putative class members, and responds to plaintiff's motion as follows:

1. Admitted in part, denied in part. It is admitted that this is a class action lawsuit brought on behalf of the past and present employees of Rohm and Haas who worked at the Spring House research facility. All other allegations in Paragraph 1 are denied. It is specifically denied that Rohm and Haas has ever stated that there is an increased rate of brain cancer at Spring House.

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AUGUST Term, 2005  
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(Check one)  Plaintiff  Defendant  
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TYPE OF PETITION/MOTION (see list on reverse side) Response to Plaintiff's Emergency Motion to Restrain Defendant's Ex Parte Contacts with Class Members  
PETITION/MOTION CODE (see list on reverse side) MTEMG

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Jennifer A. L. Battle 9/14/05 Jennifer A. L. Battle (86765)  
(Attorney Signature/Unrepresented Party) (Date) (Print Name) (Attorney I.D. No.)

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*Jennifer A. L. Battle*  
 (Attorney Signature/Unrepresented Party)

9/14/05

(Date)

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Rohm and Haas Company

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WILLIAM H. BRENDLEY, JR., Ph.D.,  
On behalf of himself and all others similarly  
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COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY

CLASS ACTION

AUGUST TERM, 2005  
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Defendant Rohm and Haas Company, by and through its counsel, opposes plaintiff's emergency motion to restrain its contacts with its employees, putative class members, and responds to plaintiff's motion as follows:

1. Admitted in part, denied in part. It is admitted that this is a class action lawsuit brought on behalf of the past and present employees of Rohm and Haas who worked at the Spring House research facility. All other allegations in Paragraph 1 are denied. It is specifically denied that Rohm and Haas has ever stated that there is an increased rate of brain cancer at Spring House.

2. Admitted.

3. Admitted upon information and belief.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted. By way of further response, to the extent plaintiff insinuates that counsel for defendant in this matter initiated or reviewed the August 19 memorandum before it was sent, such insinuation is denied.

8. The August 19 memo, attached to Defendant's Memorandum of Law in Opposition to Plaintiff's Emergency Motion ("Defendant's Memorandum") as Exhibit A, is a document that speaks for itself.

9. Denied. The August 19 memo is a document that speaks for itself. Defendant objects to plaintiff's misstatement of the contents of the memo, specifically, Rohm and Haas's statements as to the safety of working at Spring House. As is clearly set forth in the August 19 memo, the manager of the Spring House facility and the epidemiologist in charge of researching the brain cancer cases at Spring House stated that they "*continue to believe* that Spring House is a safe place to work." Exhibit A (emphasis added).

10. Paragraph 10 states a legal proposition to which no response is required. See Defendant's Memorandum.

11. Paragraph 11 states a legal proposition to which no response is required.

*See Defendant's Memorandum.*

12. Paragraph 12 states a legal proposition to which no response is required.

*See Defendant's Memorandum.*

13. Paragraph 13 states a legal proposition to which no response is required.

*See Defendant's Memorandum.*

14. Paragraph 14 states a legal proposition to which no response is required.

*See Defendant's Memorandum.*

15. Paragraph 15 states a legal proposition to which no response is required.

*See Defendant's Memorandum.*

16. Paragraph 16 states a legal proposition to which no response is required.

*See Defendant's Memorandum.*

17. Paragraph 17 states a legal proposition to which no response is required.

*See Defendant's Memorandum.*

18. Denied. The August 19 memo, which is attached to Defendant's Memorandum as Exhibit A, speaks for itself and was neither inappropriate nor misleading. By way of further answer, as set forth in Defendant's Memorandum, the August 19 memo was simply one in a series of updates to employees on the status of the brain cancer studies at the Spring House facility, which Rohm and Haas employees have come to expect. The memorandum responded to the publicity surrounding the lawsuits, which understandably may

have caused consternation among Spring House employees. The communication was provided by the Rohm and Haas managers responsible for the Spring House facility and the epidemiological studies in the continuing effort to update employees on the status of the studies and to provide them with necessary and helpful health information.

19. Denied. *See* Defendant's Memorandum and Paragraph 18. By way of further answer, Rohm and Haas maintains that a prudent approach for a concerned employee at Spring House is to obtain advice from a medical doctor, for which insurance coverage may be available through employee and retiree insurance plans, including coverage for MRIs should an employee and his or her doctor determine one is appropriate.

20. Denied as a request for relief. As set forth in Defendant's Memorandum, Rohm and Haas recognizes that its Spring House employees are putative class members and that care is necessary in communicating with them to avoid influencing their individual decisions about whether to participate in the class action lawsuit. Rohm and Haas has no objection to including a disclaimer in future communications to employees making clear that its statements are statements of opinion only, that Rohm and Haas takes no position on whether employees should participate in the class action lawsuit, and that Rohm and Haas cannot and will not retaliate against any employee who chooses to participate. However, particularly given the history of open communication between Rohm and Haas and its employees on these matters, and its employees' reliance on these communications to remain informed about these matters including the status of the ongoing studies, Rohm and Haas maintains that it cannot be constrained from continuing to communicate with its employees about the brain cancer cases at Spring House and its employees' health concerns. For example, before the filing of plaintiff's motion, Rohm and Haas was preparing to provide all employees with a status update on the

studies, to remind all past and present employees that their health insurance would cover the cost of an MRI should they, in consultation with their doctors, determine that one was appropriate, and to offer to cover the cost for such an MRI for individuals not covered by a current or former employee's health insurance or retiree benefits, but has now delayed that communication pending this Court's ruling on plaintiff's motion. Rohm and Haas requests leave to proceed with that communication, a draft of which is attached to Defendant's Memorandum as Exhibit B. Finally, due to the breadth of the putative class, Rohm and Haas requests that it be granted permission to continue to have open and unfettered communications with key individuals essential to its defense of both the class action lawsuit and the two individual actions, but who may be putative class members by virtue of having spent some time at the Spring House facility. Specifically, Rohm and Haas needs to be able to speak freely with employees who are members of Rohm and Haas's Law Department, Department of Epidemiology, and Department of Health, Safety and Reporting, and any other individuals involved in the design, implementation, or decision-making relating to the epidemiological studies undertaken by Rohm and Haas at Spring House.

interference with the rights of the parties.” *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101 (1981). In general, courts will not enter a restrictive order without a “specific record showing by the moving party of the particular abuses by which it is threatened.” *Id.* at 102. Here, there is no such record.

While Rohm and Haas is more than willing to abide by reasonable and appropriate restrictions on its contacts with putative class members, the remedies plaintiff seeks are far out of proportion to any reasonable restriction on Rohm and Haas’s contacts with its employees. Plaintiff would have this Court impose a total ban on Rohm and Haas’s communications with *any* employees (whether putative class members or not) on the subject matter of the lawsuit -- their work environment at Spring House. Plaintiff would require immediate disclosure of all communications with *any* employees about that work environment, and require a curative notice to class members advising them that there are health risks that warrant medical monitoring beyond regular medical check-ups. There is no legal support for imposing such draconian measures on Rohm and Haas, and the facts alleged by plaintiff do not warrant them.

**I. The August 19 Memorandum Was Not Inappropriate or Misleading.**

Plaintiff’s allegation that the August 19 memorandum was so “inappropriate and misleading” as to warrant a total bar on Rohm and Haas’s future communications with its employees is without foundation in either fact or law.

Plaintiff cites only one case applying Pennsylvania law in the employer/employee class action context, and its reasoning is not applicable here. In *Braun v. Wal-Mart Stores, Inc.*, 60 Pa. D. & C. 4<sup>th</sup> 13 (Ct. Com. Pl. Phila. Co. 2003), outside counsel for Wal-Mart sought leave

to conduct interviews and obtain affidavits from employees who were also putative class members in order to prepare its defense, including challenging certification of the class. *Id.* at 15-16. Citing Pennsylvania Rule of Professional Conduct 4.2, which bars a lawyer from communicating with a represented party without prior consent, this Court found that such contact would be inappropriate. In so holding, however, the Court explicitly “recognize[d] that Wal-Mart is free to manage contact with its current employees in accordance with applicable law.” *Id.* at 19.

Here, plaintiff does not claim that counsel for Rohm and Haas violated Rule 4.2 or otherwise attempted to contact putative class members directly. The August 19 memorandum of which plaintiff complains was nothing more than the type of contact expressly authorized by the Court in *Braun* – an attempt to manage employee concerns about the numerous media reports that allegations of a brain cancer cluster at Spring House had been made. Understandably, employees were concerned and looked to Rohm and Haas management for some explanation.

Indeed, under such circumstances, courts have allowed communications from an employer to its employees that specifically address publicity around class action litigation. In *Wiginton v. CB Richard Ellis*, 2003 U.S. Dist. LEXIS 16266 (N.D. Ill. Sep. 16, 2003), for example, the defendant/employer’s Chief Operating Officer reacted to publicity about a class action lawsuit alleging sexual harassment by sending an email to all employees stating, in part:

CB Richard Ellis [CBRE] has a zero tolerance policy against harassment of any type . . . If any other third person, such as a friend, acquaintance or client asks about the lawsuit, you should inform them that [CBRE] has a zero tolerance policy . . . but that you do not have any knowledge of the facts relating to the lawsuit.

*Id.* at \*2. Although the communication in that case thus not only denied the allegations regarding harassment, but put words in the mouths of employees, the Court nonetheless found that CBRE's internal communications were "not intended to discourage putative class members from participation in this case" and did "not threaten to undermine the class action process." In light of the fact that the email had been sent "in response to publicity surrounding the filing of the complaint, not . . . to intimidate its employees," the court denied plaintiffs' motion to restrict communications. *Id.* at \*8-\*9.

The other case on which plaintiff heavily relies is similarly inapposite. *Haffer v. Temple University*, 115 F.R.D. 506 (E.D. Pa. 1987), did *not*, as plaintiff claims, involve employer/employee communications, but communications between the *attorney* for Temple University and student athlete putative class members. Again, there is no allegation here that counsel for Rohm and Haas has attempted to communicate with the putative class.<sup>2</sup>

Second, the communications in *Haffer* made specific misrepresentations about the nature of the class and the identity of class counsel, and emphasized that non-class-members should not speak with class counsel, suggesting that Temple University wanted class members to decline to speak with class counsel. Rohm and Haas's August 19 memorandum contained no such statements. In fact, it contained no characterization of the class issues whatsoever. The only even arguably objectionable statement contained in the August 19 memorandum is the phrase, "These claims are without merit . . .," which could arguably have been better phrased as

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<sup>2</sup> As discussed *infra*, Rohm and Haas acknowledges that its counsel have spoken with certain Rohm and Haas managers who may be putative class members by virtue of having spent some time at the Spring House facility, but who are indispensable to Rohm and Haas's defense of these matters, including, for example, members of the Law Department and Drs. Carpenter and Greenley. But counsel has not attempted to communicate with the class at large in any way, direct or indirect.

a statement of opinion only. Even that very statement, however, has been recognized by courts as permissible and not misleading or abusive under *Gulf Oil, supra*. In *Abdallah v. The Coca-Cola Company*, 186 F.R.D. 672 (N.D. Ga. 1999), the court addressed a request for restrictions on employer/employee communications following a company-wide email sent by Coca-Cola's CEO, in which he stated that a pending discrimination class action lawsuit was "without merit" and contained "significant errors of fact." The court found that such statements were "no indication that [the CEO] intended to pressure potential class members into nonparticipation in this lawsuit when he issued the . . . e-mails." *Id.* at 678-79. Although the court did find that the risk of future coercion justified imposing some limits on future communications, the only restriction the court imposed was to require that future communications contain a disclaimer stating, "The foregoing represents Coca-Cola's opinion of this lawsuit. It is unlawful for Coca-Cola to retaliate against employees who choose to participate in this case." *Id.* at 679.

Plaintiff can point to no case that imposes the drastic remedies he seeks in response to a memorandum of the nature sent by Rohm and Haas, and can point to no evidence that the August 19 memorandum in any way interfered with the class action process.

## **II. Plaintiff's Proposed Restrictions are Excessively Draconian and Unwarranted.**

The restrictions plaintiff asks this Court to impose would entirely shut down Rohm and Haas's ability to keep necessary lines of communication open with its employees, and would prevent Rohm and Haas from defending itself in any of the three pending Spring House lawsuits against it. They are far out of proportion to the concerns raised by plaintiff, and should not be imposed here.

First, plaintiff seeks to cut off all communications between Rohm and Haas and its counsel on the one hand and *all* Rohm and Haas employees on the other, *regardless* of whether such employees are members of the putative class. Such a step is simply unnecessary to protect the putative class members from undue influence in deciding whether to participate in the class action lawsuit.

Second, the relief sought by plaintiff would prevent Rohm and Haas from fulfilling its promises to employees to keep them updated on the status of the ongoing epidemiological study. Moreover, it would prevent Rohm and Haas from disseminating useful and desirable health information to its employees, including a memorandum Rohm and Haas intended to circulate (but has refrained from sending in light of plaintiff's pending motion) that would advise current and former employees that, if they and their doctors agree that an MRI is appropriate, the cost of such an MRI will be covered either by their existing insurance or by Rohm and Haas. *See* Exhibit B (draft memorandum to current and former Spring House employees). These types of communications should not be viewed as undesirable by the Court or class counsel, and Rohm and Haas requests leave to continue to provide status updates and relevant medical information to its employees.

Third, granting the relief sought would cut off vital communication between counsel for Rohm and Haas and key witnesses necessary to Rohm and Haas's defense in this and the two individual actions, since most of the witnesses (not to mention members of Rohm and Haas's legal department) have been to the Spring House facility at one time or another and are therefore putative class members. For example, Dr. Arvind Carpenter, the epidemiologist directly responsible for the study at issue in this litigation, has obviously spent time at Spring House, as has Dr. David Greenley, the Spring House site manager. At a minimum, counsel for

Rohm and Haas and Rohm and Haas management need to be able to communicate freely, without supervision from the Court, with members of the Law department, Department of Epidemiology, and Department of Health, Safety and Reporting, as well as any other individuals involved in the design, implementation, or decision-making relating to the epidemiological study. Should it become necessary for counsel to speak with other putative class members, Rohm and Haas has no objection to seeking this Court's prior approval to expand the list of permissible contacts.

Fourth, with respect to plaintiff's request for disclosure of "all communications to date with its employees on the subject matter of this lawsuit," Rohm and Haas has no quarrel with disclosing all communications made to Spring House employees as a group about the lawsuit since its filing, since the only such communication to date is attached hereto as Exhibit A, and the only planned communication anticipated in the near future is attached as Exhibit B. But requiring Rohm and Haas to disclose each and every individual communication with the employees, written or oral, relating to their work environment at Spring House would require disclosure of confidential and attorney-client privileged communications with the categories of employees described above, who, again, are indispensable to the defense of the three lawsuits and with whom Rohm and Haas's counsel have discussed the matter. Such an order, again, would undermine Rohm and Haas's ability to mount any type of defense in these matters, and is grossly out of proportion to any possible concern of undue influence over class members.

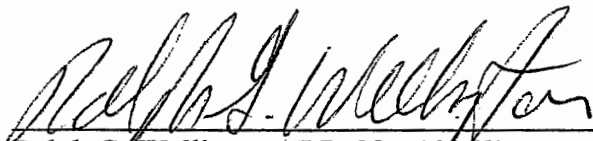
Fifth and finally, requiring Rohm and Haas to send a curative notice "informing them of the misleading nature of the memo, particularly with respect to the health risks alleged" would force Rohm and Haas to make statements to its employees that it does not believe to be true, that directly contradict the statements Rohm and Haas has made to its employees since

2002, and, moreover, that give credence to the allegations in the Complaint – allegations Rohm and Haas vigorously disputes. Plaintiff wants Rohm and Haas to tell its employees that there is a health risk or a reason to seek special medical monitoring, when all of the evidence Rohm and Haas has considered, including the results of its comprehensive and peer-reviewed epidemiological study on the matter, supports the conclusion that there is no such health risk. The law permits reasonable restrictions on communications between a defendant and putative class members; it does not require a defendant to become a spokesperson for class counsel.

### CONCLUSION

For the foregoing reasons, plaintiff's motion to restrain future *ex parte* contacts between Rohm and Haas and its employees should be denied in its entirety.

Respectfully submitted,



Ralph G. Wellington (I.D. No. 10068)  
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