

NOTICE
Decision filed 06/30/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 150235-U

NO. 5-15-0235

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> ALL LITIGATION FILED BY MAUNE)	Appeal from the
RAICHLÉ HARTLEY FRENCH & MUDD, LLC,)	Circuit Court of
)	Madison County.
Plaintiffs-Appellees,)	
)	
v.)	No. 95-ASALLLIT
)	
3M COMPANY, <i>et al.</i> ,)	
)	
Defendants)	Honorable
)	Stephen A. Stobbs,
(Exponent, Inc., Non-Party-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order requiring the production of an unredacted version of certain documents is affirmed where the documents are relevant and not subject to the attorney work-product privilege and the consultant work-product privilege. The circuit court's order holding the appellant in friendly civil contempt is vacated where the appellant's refusal to disclose the documents was not in bad faith and not contemptuous to the court's authority.

¶ 2 This appeal involves a discovery dispute arising from a subpoena for production of documents issued by the appellees, Maune Raichle Hartley French & Mudd, LLC (Maune Raichle), to the appellant, Exponent, Inc., in connection with Maune Raichle's

asbestos litigation pending in Madison County, Illinois. At the request of Exponent, a non-party in the asbestos litigation, the circuit court held Exponent in friendly civil contempt for refusing to comply with a discovery order to provide an unredacted version of certain documents requested in Maune Raichle's subpoena. Exponent appeals the friendly contempt order as well as the underlying discovery order. It contends that the circuit court abused its discretion in requiring the production of these documents because the documents are not relevant and are protected by statutory privilege. For the reasons which follow, we vacate the contempt order and monetary sanction and we affirm the underlying discovery order.

¶ 3 Exponent is a science and engineering consulting firm that conducts various studies regarding the effects of asbestos exposure and publishes its asbestos-related findings in peer-reviewed scientific journals. Some of the research studies are funded by Exponent's clients, one such client is Ford Motor Company (Ford). Maune Raichle represents clients who were allegedly exposed to asbestos and subsequently developed mesothelioma, a fatal cancer caused by asbestos exposure. Many of Maune Raichle's clients are professional mechanics or those that were allegedly exposed to asbestos-containing friction products such as brakes and clutches. Because Ford included asbestos-containing brake linings in its vehicles, it has often been a defendant in the asbestos cases brought by Maune Raichle on behalf of asbestos-exposure plaintiffs. Ford has defended these asbestos lawsuits by introducing expert testimony relying on Exponent studies, which indicate that mesothelioma is not caused by asbestos from automotive friction products, such as brakes. Ford has listed Exponent scientists as

testifying experts in other Maune Raichle cases filed in Madison County and has used expert reports that reference Exponent's studies as evidence that asbestos from the brakes incorporated in Ford vehicles cannot cause mesothelioma.

¶ 4 The focus of this appeal is redacted documents that consist of agendas from meetings held between Exponent and counsel for Exponent's clients, Ford, Chrysler, and General Motors. The redacted version of these documents was produced by Ford pursuant to a subpoena for production of documents in an asbestos lawsuit filed by Maune Raichle on behalf of Steven K. Allen, an Illinois mechanic who worked at a Ford dealership, and Judy Allen. Along with the redacted documents, Exponent also produced various asbestos-related articles published by Exponent and a summary of funding received in connection with Exponent's asbestos-related articles. Exponent also presented two corporate representatives for depositions, *i.e.*, Richard Schlenker, Exponent's executive vice president, chief financial officer, and corporate secretary, and Patrick Sheehan, Exponent's principal scientist and center director.

¶ 5 At his deposition, Dr. Sheehan testified that he was contacted by Darrell Grams, an in-house attorney at Ford, and asked to provide some assistance and research in connection with the significant number of lawsuits related to mechanic exposure to asbestos fibers when working with friction materials in order for Ford to better understand the issue of brake mechanics' exposure. Dr. Sheehan explained that the research was to educate Ford in ways that "would probably be useful to them in dealing with the litigation that they were facing."

¶ 6 Dr. Sheehan explained that he was more than likely the author of the documents and that the documents were eventually sent to representatives of Ford, General Motors, and Chrysler. He testified that he had set the agendas for the meetings and that the participants at the meetings had discussed Exponent's research. The research had eventually led to published manuscripts, which were discussed with attorneys from Ford, Chrysler, and General Motors, and were prepared with the understanding that they would be used as support for future expert testimony. He explained that he did not discuss legal strategy at these meetings and that everything that was produced with regard to the manuscripts was "technical in nature."

¶ 7 During the deposition, Maune Raichle requested that Exponent produce the unredacted version of the documents, a request that was reduced to writing the day following the deposition. The Allen case was thereafter dismissed on September 9, 2014, before Exponent had responded to Maune Raichle's discovery request. On October 27, 2014, Maune Raichle issued a separate subpoena for the production of documents to Exponent under the caption, *In re: All Asbestos Litigation Filed by Maune Raichle*.¹

¶ 8 On November 14, 2014, Exponent filed a motion to quash the subpoena, asserting, *inter alia*, that the unredacted documents were protected by statutory privilege, namely, attorney work product and consultant work product. Specifically, Exponent argued that

¹The *In re: All Asbestos Litigation* case caption is a consolidated discovery device by the Madison County circuit court to avoid duplicative discovery on behalf of similarly situated asbestos plaintiffs.

Maune Raichle sought documents in Exponent's possession that contained communication with Exponent's client's attorneys and that these communications revealed the attorneys' impressions about asbestos research studies and the impact of the research conclusions on potential litigation. Furthermore, Exponent argued that Maune Raichle could not establish that the information contained in the communications would be impossible to obtain from defendants sued by Maune Raichle and from the firm's own production files. Attached to the motion to quash was the affidavit of Eric Anderson, the vice president and corporate controller of Exponent, which indicated that Exponent had been retained by various litigants and their counsel to serve as a consulting expert to address issues in asbestos litigation and that its communications with those litigants were confidential and protected by the work-product doctrine, which protected communications with and work prepared by consulting experts for the retaining litigant. The affidavit did not specifically reference the documents at issue in this appeal.

¶ 9 On November 25, 2014, Maune Raichle filed a motion to compel, in which it argued that it sought the disclosure of highly relevant discovery for use in all Maune Raichle friction cases. Maune Raichle argued that the documents were relevant to establish bias during cross-examination of expert witnesses in asbestos litigation. With regard to statutory privileges asserted by Exponent, Maune Raichle argued that Exponent, as a non-party to the asbestos litigation, had no standing to assert either privilege. Maune Raichle also argued that Exponent could not claim the work-product privilege as an agent of Ford because Exponent had not proven facts sufficient to show that Ford or any other party had the right to control the manner and method of their work, which was required to

establish an agency relationship. Also, Maune Raichle noted that any argument of an agency relationship "undermine[d] any claim of legitimacy that may remain in connection with Exponent's science." Maune Raichle also argued that Exponent had failed to establish that the requested documents contained "core work product," which was the only work product protected in Illinois.

¶ 10 Furthermore, Maune Raichle argued that Exponent could not assert the consultant privilege as Exponent was not Ford's consultant as defined by Illinois Supreme Court Rule 201(b)(3) (eff. July 30, 2014) and had failed to make a showing that the protected documents were "core" work product. Alternatively, Maune Raichle asserted that Exponent had waived any claim to statutory privilege as the documents were likely shared with counsel for Chrysler and General Motors.

¶ 11 On January 5, 2015, a hearing was held on the plaintiffs' motion to compel and Exponent's motion to quash the subpoena. Following the hearing, the circuit court entered a written order directing Exponent to produce the unredacted version of the contested documents for an *in camera* inspection. On January 26, 2015, Exponent submitted the unredacted documents to the court along with a privilege log. On January 30, 2015, the court entered an order, finding that the documents were relevant for discovery and not subject to any applicable privilege prohibiting their disclosure.

¶ 12 On February 17, 2015, Exponent filed a motion to reconsider the circuit court's order directing production of the documents. Exponent noted that Ford intended to file a motion to intervene in the action for the purpose of asserting its work-product and

consultant work-product protections and that such intervention constituted "newly discoverable information" that warranted the court's reconsideration of the issue.

¶ 13 In addition, Exponent acknowledged that information to discredit a witness as to bias was *per se* relevant in Illinois. However, Exponent noted that no scientists or employees affiliated with Exponent were currently disclosed as testifying expert witnesses in any pending case in Madison County. Exponent further argued that it was improper for Maune Raichle to use the alleged bias of Exponent against an unaffiliated expert witness who cites to an Exponent publication. In addition, Exponent argued that the information contained in the documents at issue was irrelevant to the individual claims of Maune Raichle plaintiffs, as the performance of Exponent's research did not make it more or less likely that any particular plaintiff sustained asbestos exposure or that any exposure caused the alleged injury.

¶ 14 With regard to the claimed privilege protections, Exponent argued that the documents constituted work product in that they revealed the process by which attorneys arranged the available evidence for trial in asbestos matters and matters unrelated to asbestos litigation. Exponent explained that the consultant work-product doctrine applied to consultants not called to testify at trial and Maune Raichle could not point to a single document which established that Exponent, through an employee, had been disclosed as a testifying expert witness in any suits currently pending in Madison County where Maune Raichle represents a plaintiff. Exponent further argued that Maune Raichle failed to show sufficient exceptional circumstances that justify disclosure of the work product.

¶ 15 Thereafter, Maune Raichle filed a response to Exponent's motion to reconsider, which argued that intervention was an insufficient basis to request reconsideration as intervention was only available to a non-party and Ford was a party in the relevant cases. Maune Raichle argued that Ford had been involved in the discovery dispute from the beginning and had been given notice of every hearing held on the discovery issue. Maune Raichle noted that not only had Ford attended the hearings, but it had participated by making arguments and objections. As for the relevance argument, Maune Raichle argued that the documents were relevant to show the relationship that Ford had in creating the friction science and financial bias in that Exponent had to deliver a product that Ford would find acceptable. In support of its position, Maune Raichle noted that the documents evidenced regularly scheduled meetings between Exponent and Ford, Chrysler, and General Motors to discuss asbestos litigation.

¶ 16 With regard to the privilege argument, Maune Raichle argued that it was clear from the redacted version of the documents that they did not contain the theories of Ford's attorney as required to claim the work-product privilege. Maune Raichle noted that the documents were drafted by an Exponent scientist, not Ford's attorney, that the majority of the documents were meeting agendas written in brief bullet points, which were "hardly amenable to discussing complicated legal theories," and that at his deposition, Dr. Sheehan had testified that he did not write any memorandums involving litigation strategy. Also, Maune Raichle argued that Exponent employees had routinely testified as experts in Madison County asbestos litigation and that even if Exponent

employees were not testifying in these cases, their friction studies were routinely cited by friction experts as valid scientific literature.

¶ 17 On March 27, 2015, after again conducting an *in camera* inspection of the unredacted version of the documents, the trial court entered an order denying Exponent's motion to reconsider its order requiring the disclosure of the unredacted documents, finding as follows: (1) that the documents were prepared by Exponent for the benefit of a joint defense group, which included attorneys from Ford, Chrysler, and General Motors, and as such, any privilege had been waived by the disclosure of the documents outside the Ford control group; (2) that the documents appeared to have been prepared by Exponent for business purposes rather than to memorialize any theories, mental impressions, or litigation plans for Ford, a finding that was consistent with Dr. Sheehan's deposition testimony; (3) that even if the subject matter referenced in the documents concerned the "prospect of litigation," this was insufficient to cover them by the work-product privilege; (4) that Exponent served a dual role for Ford as both a case specific expert and a consulting expert, that it was not clear whether the subject matters of the documents sought by Maune Raichle were considered by Exponent's case specific experts, thereby waiving any applicable privilege, and that any ambiguity must be resolved in favor of disclosure as consistent with Illinois law favoring broad discovery disclosure in civil cases; and (5) Ford's assertion of its objection to the discovery requests of Maune Raichle and assertion of privilege for the first time in the motion to reconsider

hearing was untimely.² Thus, the court ordered Exponent to produce the unredacted version of the documents.

¶ 18 On April 10, 2015, the circuit court held an informal status hearing with respect to the production of the unredacted documents where Exponent informed the court that it did not intend to comply with the court's previous production order and requested that it be held in friendly contempt in order to seek immediate appellate review of that order. On May 11, 2015, an agreed order was entered into, which held Exponent in friendly civil contempt of the court's March 27, 2015, order and also ordered Exponent to pay a fine of \$1. The order noted that Maune Raichle and Exponent agreed to the entry of the order for the purposes of appeal, but Maune Raichle disagreed as to the designation of the contempt being "friendly." The court thereafter denied Ford's motion for finding of contempt after Maune Raichle argued that it would be prejudicial to allow Ford to participate in the appeal where they had chosen to not formally participate in the dispute prior to the court's order to produce the relevant documents and therefore had failed to make a formal record at the trial court level. Exponent appeals the discovery order as well as the contempt order.

²Ford had filed its motion to intervene in the case, but the circuit court found that it was moot since Ford was already a party in the case. Because the court determined that Ford was a party, the court concluded that Ford was entitled to participate at the hearing on the motion to reconsider.

¶ 19 On appeal, Exponent argues that the documents are not relevant and are protected from disclosure under the attorney work-product and consultant work-product doctrines. Exponent also appeals the trial court's contempt order, requesting that this court vacate the order where seeking a friendly contempt finding was the proper procedure to seek immediate appeal of a discovery order under Illinois law.

¶ 20 We will first address the issue of relevance. Discovery rulings are generally within the circuit court's discretion and will not be disturbed on appeal absent an abuse of discretion. *Klaine v. Southern Illinois Hospital Services*, 2014 IL App (5th) 130356, ¶ 10, *aff'd*, 2016 IL 118217; *Youle v. Ryan*, 349 Ill. App. 3d 377, 380 (2004). Illinois Supreme Court Rule 201(b)(1) (eff. July 30, 2014) authorizes a party to obtain by discovery full disclosure regarding any relevant matter, whether the discovery "relates to the claim or defense of the party seeking disclosure or of any other party." The objectives of pretrial discovery are to enhance the truth-seeking process, to enable attorneys to better prepare and evaluate their cases for trial, to eliminate surprise, and to promote expeditious and final determination of controversies in accordance with the substantive rights of the parties. *Mistler v. Mancini*, 111 Ill. App. 3d 228, 231-32 (1982). Thus, great latitude is allowed in the scope of discovery. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 556 (1998). The concept of relevance for discovery purposes is broader than for purposes of admission of evidence at trial. *Pemberton v. Tieman*, 117 Ill. App. 3d 502, 504-05 (1983). Relevance for discovery purposes includes not only what is admissible at trial, but also that which leads to admissible evidence. *Id.* at 505.

However, discovery should be denied where there is insufficient evidence that the discovery requested is relevant. *TTX Co.*, 295 Ill. App. 3d at 557.

¶ 21 In the present case, Maune Raichle argues that the documents are relevant because Ford routinely uses Exponent's friction studies to argue that the " 'independent' " studies indicate that its friction products cannot cause asbestos-related disease. Maune Raichle argues that Exponent studies are not independent studies in that the documents at issue evidence "backroom discussions" and "a financial and business relationship" between Ford, Chrysler, and General Motors and Exponent. Maune Raichle argues that the documents are relevant for asbestos plaintiffs to be able to properly cross-examine Ford's experts who rely on Exponent's studies. In support of its position, Maune Raichle cites *Piano v. Davison*, 157 Ill. App. 3d 649, 671 (1987), which stated that counsel must be given "the widest latitude during cross-examination to demonstrate any interest, bias, or motive of the expert witness to testify, and to test his accuracy, recollection and credibility." Maune Raichle also cites *Jackson v. Seib*, 372 Ill. App. 3d 1061, 1071 (2007), for the proposition that facts, data, and opinions that form the basis of the expert's opinion may be developed upon cross-examination.

¶ 22 In contrast, Exponent acknowledges that the bias of a testifying witness is relevant. However, Exponent argues that the documents are not relevant to establish the bias of a testifying expert, who relies on Exponent studies but has no relation to Exponent. Further, Exponent argues that there is no suggestion that the redacted documents would lead to discoverable information.

¶ 23 Having reviewed the unredacted version of the documents, we conclude that the circuit court did not abuse its discretion in concluding that the documents were relevant for discovery purposes and, therefore, discoverable. Maune Raichle plaintiffs are alleging that they were exposed to automobile friction components that contained asbestos and subsequently developed mesothelioma. Exponent publications have routinely been used in Maune Raichle asbestos litigation by the defense to establish that the automobile friction products did not contribute to the plaintiffs' mesothelioma.

¶ 24 The redacted documents consist of agendas of meetings held between Exponent and counsel for Exponent's clients, Ford, Chrysler, and General Motors. At his deposition, Dr. Sheehan testified that he was likely the author of these documents as he set the agendas for the meetings. Dr. Sheehan testified that the participants at the meetings discussed the research related to the ability of asbestos-containing friction components to cause mesothelioma. Thus, the documents relate to the studies and scientific defense that Ford has been using at trial. As previously stated, great latitude is allowed in the scope of discovery and the concept of relevance is broader than for discovery purposes than purposes of admission of evidence at trial.

¶ 25 Exponent also argues that the redacted material contained information that did not pertain to Exponent's asbestos-related research and was therefore outside the scope of the discovery agreed to by the parties on August 14, 2014, in the Allen case. On August 14, 2014, counsel for Exponent and Maune Raichle mutually agreed that Maune Raichle would only request the disclosure of documents pertaining to asbestos research and pertaining to Ford, Chrysler, and General Motors. The Allen subpoena requesting the

unredacted versions of the documents was issued on October 27, 2014, approximately two months after the August 2014 agreement, and in a different case, *i.e.*, *In re: All Asbestos Litigation Filed by Maune Raichle*. The plaintiffs are not attempting to enforce the subpoena in the Allen case. Instead, they issued a new subpoena in a separate case, seeking information that came to light in the Allen case. Exponent has not cited any case law in support of its argument that a discovery agreement between the parties in one case applies to all future discovery requests between the parties. However, assuming, *arguendo*, that the parties were bound by the discovery limitation agreed to in Allen, we conclude that the contents of the documents fall within the scope of that agreement. Accordingly, we conclude that the circuit court did not abuse its discretion when it found that the unredacted documents were relevant to the litigation.

¶ 26 Exponent next argues that the unredacted documents were protected from disclosure by the work-product doctrine. As we previously noted, discovery rulings are generally reviewed for an abuse of discretion. *Klaine*, 2014 IL App (5th) 130356, ¶ 10. However, the applicability of a discovery privilege is a matter of law and subject to *de novo* review. *Harris v. One Hope United, Inc.*, 2015 IL 117200, ¶ 13. Where the issue is the trial court's application of well-established law to the particular facts of the case, the standard of review is abuse of discretion. *Doe v. Township High School District 211*, 2015 IL App (1st) 140857, ¶ 74.

¶ 27 The work-product doctrine in Illinois is based on Illinois Supreme Court Rule 201(b)(2) (eff. July 30, 2014), which states that material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the

theories, mental impressions, or litigation plans of the party's attorney. Illinois has taken a narrow approach to the discovery of work product, distinguishing between "core work product" and "ordinary work product." *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill. 2d 178, 196 (1991). Ordinary work product, defined as any relevant material generated in preparation of trial which does not disclose "'conceptual data,'" is freely discoverable. *Id.* In contrast, "core" work product, defined as materials generated in preparation of litigation which reveal the mental impressions, opinions, or trial strategy of an attorney, is subject to discovery only upon a showing of impossibility of securing similar information from other sources. *Id.* This doctrine not only applies to documents prepared by an attorney, but also to documents prepared by the attorney's agent. *Mlynarski v. Rush Presbyterian-St. Luke's Medical Center*, 213 Ill. App. 3d 427, 432 (1991).

¶ 28 Privileges are exceptions to the general duty to disclose during discovery and, as such, must be strictly construed. *Lawndale Restoration Ltd. Partnership v. Acordia of Illinois, Inc.*, 367 Ill. App. 3d 24, 32 (2006). "When the principles of disclosure and privilege clash, the court must balance them in light of the specific facts in each case." *Martinez v. Pfizer Laboratories Division*, 216 Ill. App. 3d 360, 367 (1991). The party claiming the work-product privilege has the burden of showing the facts that give rise to the privilege. *Lawndale Restoration Ltd. Partnership*, 367 Ill. App. 3d at 32.

¶ 29 Here, Exponent claims the unredacted documents were protected from disclosure because they were work product in that they reveal the mental process by which attorneys serving Exponent's clients assembled the available information for use in connection with

asbestos-related litigation. Thus, Exponent has the burden of showing the facts which give rise to that privilege. We find that Exponent has failed to meet its burden.

¶ 30 In *Doe v. Township High School District 211*, 2015 IL App (1st) 140857, ¶¶ 114-16, the First District found that notes created by the school district's special education director while investigating claims of inappropriate sexual conduct at school were not protected from disclosure by the work-product doctrine for the following reasons: the notes were not prepared by the school district's counsel and, thus, did not reveal counsel's mental processes in evaluating his communications with possible witnesses; the director did not state that he communicated with the legal department prior to creating the notes or that he was advised by his supervisor as to theories of the district's attorneys; and the notes did not become part of counsel's thought processes when the director summarized the results of his investigation to his supervisor at a meeting that counsel also attended.

¶ 31 Like *Doe*, the documents at issue in the present case were not prepared by an attorney. They were prepared by Dr. Sheehan, an Exponent scientist. In addition, there was no indication in the record that Ford had any part in the creation of the agendas for the meetings. Exponent does not dispute that the documents were not prepared by an attorney. However, it claims that the documents are still protected under the work-product doctrine because the documents were prepared by an attorney's agent. Exponent, as the party alleging the agency relationship, bears the burden of proving by a preponderance of evidence that the agency relationship exists. See *Union Planters Bank, N.A. v. FT Mortgage Cos.*, 341 Ill. App. 3d 921, 928 (2003). Exponent has failed to present any evidence indicating that Ford has the right to control the manner and method

in which it performs its work, which is required to establish an agency relationship. See *McHale v. W.D. Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 61 ("An agency is a fiduciary relationship in which a principal has the right to control the manner in which the agent performs his work and the agent has the power to act on the principal's behalf and subject the principal to liability.").

¶ 32 In addition, we conclude that the documents are not "core" work product. The documents consist of agendas of meetings, which are in bullet point format, attended by Dr. Sheehan and counsel for Ford, Chrysler, and General Motors. At the meetings, the participants discussed the friction-materials research that was conducted by scientists at Exponent. Dr. Sheehan testified that he did not discuss legal strategy with Exponent's clients and that his work was "technical." Exponent points to Eric Anderson's affidavit to support its position that the documents are work product. However, Anderson's mere assertion that the documents are work product without further factual proof giving rise to the privilege is insufficient. After carefully reviewing the unredacted version of the documents, we find that the documents do not reflect or disclose the theories, mental impressions, or litigation plans of Ford's counsel and, thus, are not protected by the attorney work-product doctrine.

¶ 33 Exponent also argues that the documents are protected from disclosure by the consultant work-product doctrine. Illinois Supreme Court Rule 201(b)(3) (eff. July 30, 2014) provides as follows with regard to the consultant work-product privilege:

"A consultant is a person who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial.

The identity, opinions, and work product of a consultant are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means."

¶ 34 The trial court found that Exponent served a dual role for Ford, both as a case specific expert and consulting expert. Dr. Sheehan testified that he was contacted by Ford's counsel to provide assistance and research in connection with a significant number of lawsuits related to mechanic exposure to asbestos fibers. The record evidences that the research conducted by Exponent led to published manuscripts that were prepared with the understanding that they would be used as support for future expert testimony. The documents at issue were created for the meetings where this research and the published manuscripts were discussed. Although Exponent acknowledges that the studies created as a result of this research have been used in previous asbestos-exposure trials, and in some instances, by Exponent employees testifying for Ford, Exponent argues that no scientist or employee affiliated with Exponent has been currently disclosed as a testifying expert witness in any case in Madison County. Thus, Exponent argues that it falls within the definition of "consultant" as defined by Rule 201(b)(3).

¶ 35 In response, Maune Raichle argues that Exponent scientists are not considered consultants because their work product is created to be used at trial and has been used in previous asbestos litigation. In support of this position, Maune Raichle cites *Wiker v. Pieprzyca-Berkes*, 314 Ill. App. 3d 421, 429 (2000), in which the First District noted that a person hired to make a surveillance video can qualify as a consultant under Rule

201(b)(3) as long as the *person and the video* are not presented at trial. Maune Raichle also cites *People v. Knuckles*, 165 Ill. 2d 125, 140 (1995), which held that a psychiatrist's notes and opinions will be protected by the attorney-client privilege as long as the psychiatrist's notes and opinions will not be used in the formulation of other defense experts' trial testimony. Thus, Maune Raichle argues that Exponent is not a "consultant" under Rule 201(b)(3).

¶ 36 However, even if Exponent is considered a consultant, the documents at issue would not be protected from disclosure by the consultant work-product doctrine. This doctrine protects the "identity, opinions, and work product of a consultant." The work-product doctrine is interpreted in the same manner for consultants as it is for attorneys. *Midwesco-Paschen Joint Venture for the Viking Projects v. Imo Industries, Inc.*, 265 Ill. App. 3d 654, 667-68 (1994). As we have already concluded that the documents do not constitute "core" work product, the documents are not entitled to the protection of the consultant work-product doctrine. Accordingly, because we have concluded that no statutory privilege recognized under Illinois law protects the disclosure of the unredacted version of the contested documents and we decline to expand or create a privilege under these circumstances, we affirm the circuit court's order requiring the disclosure of the documents to Exponent. See *Klaine*, 2014 IL App (5th) 130356, ¶ 20 (a privilege does not exist unless the legislature makes an explicit provision to that end).

¶ 37 Lastly, we must address the civil contempt order entered by the circuit court, which Exponent asks us to vacate. The appropriate method for obtaining immediate appeal of a discovery order is to request that the circuit court enter a contempt order.

Klaine, 2014 IL App (5th) 130356, ¶ 9. Where the discovery order is found improper, the finding of contempt must be reversed. *Id.* Where the discovery order is affirmed by the reviewing court, the contempt order as well as the assessment of the monetary penalty may nevertheless be vacated if the court finds that the refusal to produce the discovery documents was not contemptuous of the circuit court's authority, but rather was made in good faith based on sound legal arguments for the purpose of securing an interlocutory appeal. *Id.*

¶ 38 We conclude that Exponent was acting in good faith and not being contemptuous of the circuit court's authority when it did not comply with the court's order to disclose the documents at issue. Thus, we vacate the circuit court's May 11, 2015, order, which found Exponent to be in contempt of court for failing to produce the unredacted version of the contested documents to the plaintiffs and assessed a monetary penalty.

¶ 39 For the foregoing reasons, we affirm the circuit court's March 27, 2015, discovery order and vacate the May 11, 2015, order that found Exponent to be in contempt and assessed a monetary penalty.

¶ 40 Affirmed in part and vacated in part.