

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: WELDING FUME PRODUCTS** : **Case No. 1:03-CV-17000**  
**LIABILITY LITIGATION** : **(MDL Docket No. 1535)**  
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**INTERNATIONAL EPIDEMIOLOGY** :  
**INSTITUTE,** :  
: **Case No. 1:07-MC-003**  
**Plaintiff** :  
: **JUDGE O'MALLEY**  
**v.** :  
: **PROTECTIVE ORDER**  
**ACETYLENE OXYGEN COMPANY, et al.,** :  
:   
**Defendants** :  
:

The Court has reviewed the briefs submitted by the parties and finds that good cause exists for entry of this protective order governing certain data related to the “Danish study.”<sup>1</sup> Accordingly,

**IT IS HEREBY ORDERED** that:

1. The International Epidemiology Institute (“IEI”) shall deliver to the Court the original unredacted CD containing data related to the Danish study (the “Original CD”).

2. The Original CD shall be maintained by the Court under seal for the remainder of this action.

It shall not be accessed or viewed by anyone (including the parties, their experts and agents, the

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<sup>1</sup> Fryzek, J.P., *et al.*, *A cohort study of Parkinson’s disease and other neurodegenerative disorders in Danish welders*, 47 J. Occup. & Envtl. Med. 466 (2005).

Court, and its personnel). If any party or the Court later determines that a need exists to examine the Original CD, they shall first give IEI and all parties ten (10) days prior notice of their intent to request access to the CD and give IEI and all parties an opportunity to object. Notice to IEI shall be provided by notifying its counsel, Christopher H. Buckley, Jr. of the Washington, DC office of the law firm of Gibson, Dunn & Crutcher LLP. If any objections are filed, the Original CD shall not be accessed until such objections, including all appeals, are finally resolved. At the conclusion of this litigation, the Original CD shall be returned to IEI for transmission to the Danish Cancer Institute (“DCS”).

3 Subject to the supervision, assistance and approval of the DCS, IEI shall create a redacted copy of the Original CD deposited with the Court (the “Redacted CD”).

4. The Redacted CD shall be an exact copy of the Original CD, except that IEI shall remove or replace any information or data from which the identities of individual study participants could potentially be determined, including, for example, CPR numbers. The CPR numbers shall be replaced with unique placeholder numbers which will allow the data on the CD to be statistically analyzed.

5. IEI shall produce copies of the Redacted CD to Defendants' Liaison Counsel and Plaintiffs' Co-Lead Counsel subject to the following terms:

A. All parties and all other persons or entities having access to the Redacted CD and its contents by virtue of this Order shall not use or disclose the Redacted CD or its contents for any purpose other than preparation for, and defense of, pending cases involving claims of neurological injury from welding fume exposure. All parties agree that the information obtained from the Redacted CD shall not be used as the basis for any future article or public

presentation other than an expert report submitted in this MDL proceeding.

B. Neither the Redacted CD nor its contents shall be disclosed to any persons other than the following: (a) outside counsel for defendants, counsel for plaintiffs, and their respective office staffs, (b) outside experts engaged for purposes of the underlying litigation, and (c) corporate officers of defendants and others responsible for the supervision of counsel and the conduct of the litigation.

C. Each person having access to the Redacted CD or its contents shall first execute a non-disclosure affidavit or declaration in the form attached hereto. In the event the Redacted CD or its contents are to be disclosed to a deposition witness, the witness shall first be informed, on the record, of the requirements of this Order and the witness' obligation to comply with this Order. Absent such agreement, no portion of the Redacted CD or its contents shall be shown to any deposition witness.

D. The redacted CD or its contents may be referenced, appended or incorporated in court submissions, provided that they shall ONLY be filed under seal with the Court and prominently marked “**Confidential Material Subject to Protective Order**”. No “**Confidential Material**” shall be publicly filed, attached as exhibits or otherwise produced in any manner contrary to the terms of this Order. Any portions of deposition or trial transcripts which reference “**Confidential Material**” shall be prominently marked “**Confidential Material Subject to Protective Order**”, shall ONLY be filed under seal with the Court and shall not be released or otherwise disclosed except in connection with this litigation to persons identified in subparagraph B hereinabove who previously executed a non-disclosure affidavit or declaration.

E. All persons who obtain access to the Redacted CD or its contents, and all parties and their agents and experts, are prohibited from attempting in any way, directly or indirectly, to ascertain the identity of any study participant or to match the data on the CD to any individual.

F. The terms and requirements of this Order shall remain in effect even if the Redacted CD or its contents are disclosed to a jury in open court.

G. Counsel for all parties shall return the Redacted CD and all copies thereof and all copies of its contents in any form (except as may have been filed with the Court or marked as exhibits) to IEI at the conclusion of all pending welding rod cases involving neurological claims.

H. Nothing herein shall be construed to restrict the authority of the presiding judge in the underlying case to make such other and further orders with respect to the redacted CD or its contents as may be deemed appropriate under the circumstances; it shall be the responsibility of the parties to the welding rod cases promptly to notify counsel for IEI of any such proposed change or changes so that they may have an opportunity to state their position(s) on such change or changes.

I. The parties agree that the limitations of this Order shall apply equally to any state court proceedings and any proceedings in other federal courts.

This Court shall retain jurisdiction over the parties to this discovery proceeding for the limited purpose of overseeing compliance with this Order.

**IT IS SO ORDERED.**

/s/ Kathleen M. O'Malley  
**KATHLEEN McDONALD O'MALLEY**  
**UNITED STATES DISTRICT JUDGE**

**February 21, 2007**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:  
WELDING FUME PRODUCTS  
LIABILITY LITIGATION

Case No. 1:07-mc-00003-KMO

Related to:

Case No. 1:03-cv-17000  
(MDL Docket No. 1535)

JUDGE KATHLEEN O'MALLEY

**NON-DISCLOSURE AFFIDAVIT**

AFFIDAVIT OF \_\_\_\_\_

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

1. My name is \_\_\_\_\_ (*state name*). I live at \_\_\_\_\_ (*state address*). I am employed as \_\_\_\_\_ (*state position*) by \_\_\_\_\_ (*state name and address of employer*).

2. I am aware that a Protective Order as to a CD produced by the International Epidemiology Institute ("IEI") containing documents and data related to the Danish study<sup>1</sup> (the "CD") has been entered in *Welding Rod Products Liability Litigation*, Case No. 1:03-cv-17000-KMO in the United States District Court for the Northern District of Ohio, and a copy of the Protective Order has been given to me.

3. I promise that the contents of the CD, including but not limited to data, documents, and any information contained therein, as well as any copies thereof, any portions thereof, and any notes or summaries thereof (collectively referred to as \_\_\_\_\_

<sup>1</sup> Fryzek, J.P. et al., *A cohort study of Parkinson's disease and other neurodegenerative disorders in Danish welders*, 47 J. Occup. & Env'tl. Med. 466 (2005).

“*Confidential Material*”), will be marked “**CONFIDENTIAL**” and utilized only in connection with the litigation of pending claims of neurological injury from welding fume exposure (“*underlying litigation*”).

4. I agree that "*Confidential Material*" may be referenced, appended or incorporated in court submissions, provided that the "*Confidential Material*" shall ONLY be filed under seal with the Court and prominently marked "*Confidential Material Subject to Protective Order*". No "*Confidential Material*" shall be publicly filed, attached as exhibits or otherwise produced in any manner contrary to the terms of the Protective Order. Any portions of deposition or trial transcripts which reference "*Confidential Material*" shall be prominently marked "*Confidential Material Subject to Protective Order*", shall ONLY be filed under seal with the Court and shall not be released or otherwise disclosed except to Qualified Persons in connection with the "*underlying litigation*" who previously executed a Non-Disclosure Affidavit.

5. I agree that “*Confidential Material*” may be provided only to a witness who is first informed, on the record, of the requirements of the Protective Order and the witness’ obligation to comply with the Protective Order. “*Confidential Material*” may be provided only to a witness who agrees on the record to the terms of the Protective Order, or to a witness who is a Qualified Person who has previously executed a Non-Disclosure Affidavit.

6. As a recipient of “*Confidential Material*,” I promise that I will not utilize, release, disclose, discuss or provide copies, summaries, or notes of any such “*Confidential Material*” to any person or entity other than to Qualified Persons in connection with the “*underlying litigation*”. Qualified Persons are LIMITED to:

- (a) counsel of record for the parties to the “*underlying litigation*” and their office staff;
- (b) outside experts engaged by the parties for the purposes of the “*underlying litigation*”;
- (c) corporate officers of defendants responsible for the supervision of the conduct of and counsel to the “*underlying litigation*”; and
- (d) other persons responsible for the

supervision of the conduct of and counsel to the “*underlying litigation*”.

7. I promise that before I utilize, release, disclose, discuss or provide copies, summaries, or notes of any “*Confidential Material*” to any Qualified Person for the purposes of the “*underlying litigation*,” I will first ensure that said Qualified Person has properly executed a copy of this Non-Disclosure Affidavit. I promise that I will maintain a list of and a properly executed Non-Disclosure Affidavit for any and all such Qualified Persons to whom I provide any “*Confidential Material*” for the purpose of ensuring and overseeing compliance with the Protective Order.

8. I promise that I will not utilize the “*Confidential Material*” in any way, directly or indirectly, to apply for or obtain grants or funding for any studies, to undertake or conduct any studies, or to write any papers, articles, reviews, commentaries, letters to the editor or publications pertaining to any studies or any “*Confidential Material*”.

9. I promise that I will not use any knowledge gained from the “*Confidential Material*” in reviewing any publications or grant applications, generated by any of the authors of the Danish study, related to welding or manganese and parkinsonism. Furthermore, I will declare my conflict of interest to the editor or funding agency and decline any review of publications or grant applications generated by any of the authors of the Danish study related to welding or manganese and parkinsonism.

10. I promise that I will not utilize the “*Confidential Material*” in any way, directly or indirectly, to ascertain or attempt to ascertain the identity of any person whose data were retrospectively reviewed for the Danish study.

11. I promise that I will not utilize the “*Confidential Material*” in any way, directly or indirectly, to match the documents, information or data to any individual person whose data were retrospectively reviewed for the Danish study.

12. I promise that I will protect all “*Confidential Material*” as confidential, and I will properly control and safeguard these materials against unauthorized access or reproduction.

13. I understand and acknowledge that use of any “*Confidential Material*” in a courtroom is not a waiver of the protection granted by the Court’s Protective Order, and that all the terms and conditions of the Protective Order, and my obligations, continue in full force.

14. I promise that I will return all copies of the “*Confidential Material*”, in any form, including any portions or summaries of the “*Confidential Material*,” to IEI within thirty (30) days of the earliest of: (a) the conclusion of my status as a Qualified Person for any reason, or (b) the conclusion of all pending welding rod cases for which I am a Qualified Person.

15. I understand that any use of “*Confidential Material*” in any manner contrary to the terms or spirit of the provisions of the Protective Order may subject me to sanctions by this Court.

16. I promise that if I become aware of any disclosure of any “*Confidential Material*” to any person or entity other than for the purpose of the “*underlying litigation*” to Qualified Persons, whether inadvertent or otherwise, I will provide written notification as soon as possible, but no later than within ten (10) days of my awareness, to counsel for IEI and to the Court.

**FURTHER AFFIANT SAYETH NAUGHT.**

\_\_\_\_\_  
(Affiant)

Subscribed and sworn to before me, a notary, for and in the above said State and County, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

\_\_\_\_\_  
(Notary)

My Commission Expires:\_\_\_\_\_