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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

THOMAS RUBINO, Individually and as Successor-in-Interest to CARMINE RUBINO, JR., Decedent; DANIEL RUBINO; and DOES ONE through TEN, inclusive,

Plaintiffs,

vs.

AC AND S, INC., et al.,

Defendants.

Case No.: CGC-08-274556

EXHIBITS AA-FF TO: DECLARATION OF JOHN TEMPLIN IN SUPPORT OF PLAINTIFF' OPPOSITION TO DEFENDANT BASF CORPORATION'S MOTION FOR SUMMARY JUDGMENT AND/OR ADJUDICATION

EXHIBIT "AA"

INTER-DEPARTMENT MEMORANDUM

TO	C. D. Carter	FROM	J. M. Zimmermann	DATE	November 6, 1979
SUBJECT	New England 42 Talc Accounts				

Please give me your comments on the short and long term strategies and tactics to be pursued at these accounts in this area.

As 1980 approaches, we must re-think our positions at each account and in total for these New England Accounts. We can expect increasing Vertal activity at our accounts, possibly requiring freight equalization long term. At the same time, by freight equalizing, we can grow.

To Grow: Would have to equalize freight ($3-6/t) to get 50% (or more).

Marson	3-4000 tpy	EMC Position:	List; 900 tpy; $5-6/t high in freight cost; need good TL service;
Sunoco	2000 tpy	EMC Position:	0; $5/t High on freight. Need good TL service.
Others	- ? -		
Total	5-6000 tpy	Need good TL service.	

To Protect: Freight disadvantage of $3-6/t in each case.

Unican	1800 tpy	EMC Position:	100%; list; Prefer EMC quality; truckloads
Bondo	1800 tpy	EMC Position:	100%; list; Truckloads; has sampled a TL of Vertal; EMC contract with Dynatron
G.E.	1800 tpy	EMC Position:	100% bulktruck; List;
Townsend	1000 tpy	EMC Position:	100%; List; EMC quality preferred; truckloads
Total	6400 tpy		

Other Factors:

EMC quality and service have some value at certain accounts. Total talc used is stable or declining slightly. OMYA needs tons to write off new equipment.

Possible Strategies:

1. Hold our own, leave Vertal alone. (6400 tpy) Freight equalize as forced. Build quality and service advantages.
2. Hold our own, go for a share of their two (6400+1250,25%)
+1700,33%)
+2500,50%)

INTER-DEPARTMENT MEMORANDUM MINERALS & CHEMICALS DIVISION

TO		FROM		DATE	
SUBJECT					

Freight equalize? Part way? EMC captive trucking? Build quality and service advantages.

3. Hold ours and go for all of theirs. (11,600T)
Freight equalize as forced on our accounts, right away on theirs; price incentives; special packaging palletizing. Price War.

4. Fall Back Position for 50% share at all accounts. $\frac{(6400+5000)}{(2)}$ = 5700 T

The Middle Atlantic area has a similar situation.

Give me your reactions and any special circumstances for each account by 11/31/79 so we can come up with a consistent 80-84 plan by 12/16/79.

COPY TO	WRK, AGE, JHS, DAC, DAJ, JEA, DAS	SIGNED	Mike

FM-1037 6/76

RUBINO

EXHIBIT "BB"

Kevin Kearney

SALESMAN CALL REPORT

COMPANY NAME: Dynatron Bondo

DATE: 8-19-80

ADDRESS: Northford, CT

TEL: ____ VISIT: X

LYTD: $58,245

PERSON CONTACTED: Phil Price

YTD: $39,263

DETAILS:

There had been XX a problem here concerning Saturday morning pick-ups however they got word from Engelhard that they can now pick-up again on Saturdays apparently business has started to pick up enough at the plant where they are able to have people XX at the plant in Vermont on Saturday so it is no problem here and they are happy again. Actually it kind of made up look good because it wasn't much more than a week or so after I had been in there the last time that Engelhard called them up and told them to come on in on Saturdays again, so they were happy about what we seemed to have done for them.

According to Phil the biggest reason for the talc being off X is the fact that the new lightweight material that they are making XX not require nearly as much talc, so that is why it does has the biggest effect on their usage. But the Engelhard talc is the only talc that they use here, they don't buy a pound of Vermont talc or anybody else's.

xc E.D. Carter - Engelhard

R.T.O. ✓
W.R.K. ✓
W.F.G. ✓

cc: JMZ

ACTION NEEDED:

EXHIBIT "CC"

MINERALS & CHEMICALS DIVISION CTC
Engelhard Minerals & Chemicals Corporation

Menlo Park, Edison, N. J. 08817

CUSTOMER'S REPORT

☐ Visit
☐ Phone
☐ Attapulgus
☐ Porocel
☐ Kaolin
☐ Catalyst

Firm Name Dynatron – Bondo
Address Atlanta, GA

Date of Visit 12/9/81 Date of Report 12/18/81

Salesman JMZ and John Morris

Personnel Quinn Machamer, Pres.
Scott Thurmond, Purch. Agent
Bill Beary, Mgr. Manufacturing
Charlie Dugger, Expeditor

Literature

Samples

Mail List

Business

Requirements 9,000 TPY Total Talc which includes 750 tons of 4190, 8,250 tons of 42 and about 50 tons of 500 for Manufacturing Plants in the U.S. and Canada

Remarks:

Objective: To arrive at the basis for our contract for 1982.

Scott carried on the negotiation. Despite the fact that he was new, he has apparently been well briefed by Quinn. His taking over the negotiation (with Quinn's approval as we later learned) represents one more step in Dynatron's attempt to grow and become more professionally staffed. Although we were able to speak with Quinn during this visit, it appears that we were purposely required to do all negotiation with Purchasing rather than with Mr. Machamer himself.

Scott started with a demand that we hold the 1981 contract price for Emtal 42 for all of 1982 and that we cut the price on 4190. He also asked for 180 day price protection on all future increases and a statement from Engelhard that the contract price to Dynatron is as good a price as any one customer of like grade quantity and quality of purchase now receives.

After an hour of strenuous and intense discussion, we arrived at the following compromised terms which we agreed to take back to our management. These are the terms which John and I recommend and which Dynatron has agreed to:

Volume: Emtal 42 - 8,500 to 10,000 tons
Emtal 41 - 750 to 1150 tons

Terms: 45 days terms (He insisted on 60 days, but I am suggesting that we back off on this a little bit and make our firm offer at 45).

Price Protection: 90 days - price list ~ $3/Ton on all grades of talc purchased.

Added Term to be Considered: A statement that says the terms of this contract are competitive with other customers of similar grade, quality and quantity.

cc

ET002248

EM-10775 6/75

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With this contract in place, we will hold the volume and our 100% supply position at list price. (We do not pay commission on Dynatron sales, so the $3/T discount returns most of this cost savings to Dynatron. On 42, the commission is approximately equal to the discount, while on 4190, the discount is considerably less than the commission savings. To achieve these first three objectives, we were forced to yield 30 days more on price protection, 15 days on credit terms, and extend the $3/T discount to 4190.

If advantageous to us, we might also consider writing in a 1 or 2% discount for payment within 10 days. This will be looked at financially.

Mike Zimmermann will prepare this contract and obtain approval at Menlo. John Morris will present it back to the customer.

Market Position: Dynatron has gained 17% in volume of body filler sales vs. 1980. This represents their capture of an increasing share of what they see as a declining total body filler compound market. Five years ago, body filler represented over 70% of their sales. Now it is only 40% as they move into more and more consumer items and specialty types of repair materials such as Fiberglas reinforced polyester compound.

The trend to light-weight body filler compound continues. Our talc volume should be stable or growing slightly in 1982. We were not able to gain any recent statistics on the percent of Dynatron's body filler that is light-weight vs. regular, but it is definitely well over half light weight by now.

Dynatron has no technical person, but we pressed heavily for the opportunity to follow through on the use of 4190, 41, and the design of a "one talc" system for light-weight body filler. This is of some considerable interest in the Guelph, Ontario Plant. Apparently, they are doing some development work with an unknown talc with a price of about $71/T that seems to work as well as 4190 ($140/T) in their light weight body filler. It is likely that this is an apples to oranges comparison, and that we could do a lot better. I will ask Debro to follow up on this development.

John Morris will make an attempt to meet their technical consultant, who is a part time employee and difficult to catch.

Scott promised to get a sample of the competitive talc from Canada so that we can analyze it, but didn't want to give us a name and address information.

ET002249

Points made and benefits of dealing with Engelhard. The following points were made and are listed here only for reference in future negotiations: Long term relationship, no gains, dealing straight, major difference between the talc business and the resin business, the history of moderate price increases in talc, the national coverage of Dynatron that we give, the incentive hopper car rates and hopper car supply Engelhard provides.

Key points: 1) On time supply - always there, never threaten Dynatron with a shut-down.

2) Reliable quality - Engelhard does all of Dynatron's Q.C. for them, as specifically ordered by Mr. Machamer.

3) Importance of talc to the compound - You can't make it or make it right without quality talc.

4) Ridiculously low price of the talc - 30 - 50% of the compound is talc yet the price is 10% of less of the price of a total gallon of material.

Other factors: Engelhard reimburses Dynatron for any phamtom freight due to our underloading of hopper cars, we have worked with them very heavily in giving some to relief ($3700) in 1982, cars are routinely traced and that information given to Dynatron, immediate order confirmation is provided to the California Plant, technical service assistance is available.

The emphasis is on a long term relationship and the non price benefits that that brings.

JMZ:sc

cc: John Morris
Bro Baur
C.D. Carter
G.E. Montour
Dave Stock - Debro
R.W. Graf
D.A. Clark
C.D. Richardson

EXHIBIT “DD”

MINERALS & CHEMICALS DIVISION MENLO PARK, CN 28, EDISON, NJ 08818

CUSTOMER'S REPORT

[X] Visit
[ ] Phone
[ ] Attapulgus
[ ] Porocel
[ ] Kaolin
[ ] Catalyst

cc PMB For your Info.

Firm Name: Dynatron Corp.
Address: Atlanta, GA

Date of Visit: 12-7-82
Date of Report: 12-13-82
Report No.: 5

Salesman: J. J. Morris W/Mike Zimmermann - W. Gobel

Personnel: Scott Thurman - Purchasing
Abdul Razzak - T. D.

Business: Body Filler

Requirements:
8,000 T/Yr. Emtal 42
750 T/Yr. Emtal 4190

Literature

Samples

Mail List

Remarks:

Purpose of Visit: Preliminary 1983 contract negotiation.

Results of Call: Scott had requested a letter supporting our reasons for a Talc price increase. Mike's letter of 11/24/82 detailed cost factors impacting our profitability (labor, electricity, etc.), our mid-year response to Vertal's competitive offer, and the full range of services that we have developed to assure Dynatron of quality products, delivered on-time and within specifications. Scott, although sympathetic to our needs and concerns, feels that the pressures of the market place (competitive pricing has seen their case goods discounted by 20%) requires that their costs must be controlled if they are to remain profitable. He indicated that a check with the Census Bureau & Union labor representative yielded cost factors somewhat in variance with our cost contentions. Regarding our mid-year response to Vertal, we granted Dynatron a 4.25 discount vs. Vertal's 7.00/ton offer. The 2.75 per ton difference was reflected in lower freight rates to California which, on a delivered-in price, met Vertal's pricing. Since then Vertal has obtained equal freight rates to California. In addition, Vertal's rate to Atlanta is now more favorable (38.84 vs 42.75). With Vertal continuing the pressure on competitive pricing, Scott asked that we consider the following proposal:

A) No price increase for 1983. (Present contract has 90 day price protection). Present bulk price and bag price will continue to reflect the $2.75 differential mentioned above.

B) EC work to develop competitive freight rate to Atlanta, GA to counter Vertal's present advantage.

Scott feels that by our agreeing to the above proposal he will be able to continue supporting our position as the sole talc supplier to Dynatron. A Vertal trial now underway at the Connecticut plant will be finalized and results developed, but Scott indicated his desire to abide by contract contents, which stipulate a 100% supply situation.

Required Action:

Mike Zimmermann to review with Menlo Park the above proposal. Follow up letter to Scott Thurman by Mike indicating a response, in some form, by JJM during mid January, 1983.

JJM/jw

cc CDR WHS DLB BP

ET002253

EXHIBIT "EE"

ENGELHARD
MINERALS & CHEMICALS DIVISION

MENLO PARK, CN-28, EDISON, NJ 08818

CUSTOMER'S REPORT

☒ Visit
☒ Phone

☐ Attapulgus
☐ Porocel
☐ Kaolin
☐ Catalyst

Firm Name Dynatron
Address Atlanta, GA

Date of Visit 3-23-83
Date of Report 3-25-83
Report No.: 5

Salesman J. J. Morris

Personnel
S. Thurman - Purchasing
A. Razzak - T. D.

Business Body Filler

Requirements
8,000 T/Yr. Emtal 42
750 T/Yr. Emtal 4190

Literature

Samples

Mail List

Remarks:

Purpose of Call: Discuss contract renewal.

Results of Call: The lower bulk freight rates that Vertal had offered on shipments to Atlanta are now confirmed by letter to Dynatron. The rate, on minimum 180,000 lb. cars, is $37.39 vs. our rate of $41.72. Late in 1982 Vertal also attained an equal freight rate to California, eliminating a freight advantage we had enjoyed in the past. During mid-1982 we had responded to another Vertal pricing initiative of a further reduction of $7 per ton on bulk shipments. At that time, because of our freight advantage to California, a reduction of $4.25 per ton equalized Vertal's $7 per ton offer. With Vertal at equal rates to California the remainder of the $7 offer, or $2.75/ton, places us at a further disadvantage. Scott stated his position on renewing our contract for 1983:

1) Will not accept a price increase during 1983. Vertal has written to him and indicated they will not raise prices.
2) Meet the competitive bulk rate to Atlanta.
3) Scott will not ask us for the 2.75 per ton that is referred to in the above paragraph.

Scott spoke directly to a problem he has with the Technical Department in the form of Abdul Razzak. Abdul, during meetings, indicates he will not have a problem switching to a competitive talc. With Quinn Macamer involved in these discussions, Scott feels that a request on our part for a price increase while facing the reality of a competitive offering would place our 100%-supply situation in jeopardy, a supply situation he has supported in meetings with Quinn. Scott feels that the conditions he has outlined, if complied with, will satisfy the internal conflicts he contends with and enable him to renwe our contract.

See Page 2

cc CDR WHS DLB BP

ET002265

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ENGELHARD
MINERALS & CHEMICALS DIVISION

MENLO PARK, CN 28, EDISON, NJ 08818

CUSTOMER'S REPORT

☐ Visit ☐ Phone

☐ Attapulgus ☐ Porocel ☐ Kaolin ☐ Catalyst

Firm Name Dynatron
Address Atlanta, GA

Date of Visit 3-23-83 Date of Report 3-25-83
Report No.: 5

Salesman J. J. Morris

Personnel

Business Requirements

Literature
Samples
Mail List

Remarks:

Reviewed with Abdul Razzak recently evaluated samples of a blend of Emtal 42/4190. He had prepared his own samples, blending Emtal 42/4190 and upon comparing viscosities between samples found a wide variable in readings. The samples of Emtal 42/500 are in his lab and they will be looked at next week. He will make a decision on either Emtal 4190 or Emtal 500 as the fine particle talc offering optimum blend characteristics.

Required Action:

1. Review contract pricing with Mike Zimmerman.
2. Discuss Vertal competitive rates to Atlanta, GA.
3. Have Bill Gobel call Abdul to discuss viscosity readings.

JJM/jw

cc CDR WHS DLB BP

ET002266

EXHIBIT "FF"

ENGELHARD
MINERALS & CHEMICALS DIVISION — MENLO PARK, CN 28, EDISON, NJ 08818

CUSTOMER'S REPORT

Firm Name	Dynatron
Address	Atlanta, GA
Date of Visit	6-15-83
Date of Report	6-22-83
Report No.:	8
Salesman	J. J. Morris W/J. M. Zimmermann, W. E. Nettles

☑ Visit ☐ Phone

☐ Attapulgus ☐ Porocel ☐ Kaolin ☐ Catalyst

Personnel: Q. Macamer - Pres.
A. Razak - T. D.
S. Thurman - Purch.

Literature / Samples / Mail List

cc PM Baker - more pricing problems, thought you should know.

Business Requirements: Body filler
8,000 T/Yr. Emtal 42
750 T/Yr. Emtal 4190

Remarks: Purpose of Call: Review 1983 contract pricing.

Results of Call: During the past two months we have attempted to resolve talc pricing in order to renew our yearly talc contract. During this time Dynatron has moved quickly to a decision on the use of a new product which is a combination of 85% Emtal 42 and 15% Emtal 4190. At the same time Vertal has offered their competing product. Trials have been conducted at their Conn. plant and Abdul indicates both products are acceptable. We addressed the problem of pricing in the light of a continuing decline in contract prices, which accelerated mid year 1982 and Vertal's assurance to Scott Thurman that they would not seek a price increase during 1983. Additionally, Vertal secured a lower bulk and bag freight rate to the Atlanta operation during early 1983. However, the impetus to convert to a, as they characterize it, blended product made price discussions on Emtal 42 and 4190 academic. They asked us what our pricing would be on M-8354, and on being informed it would be $80/ton replied that Vertal's price was lower than our present pricing on Emtal 42. I had been told by Scott that it was $51/ton. At this point Quinn Macamer indicated his long standing desire to remain with Engelhard, citing our past relationship, product quality, reliability, etc., but with a pricing disparity of over $25/ton a decision had been made to go with Vertal if we do not choose to meet Vertal's price. In any case, Quinn stated that due to Vertal's continued pricing activity over the past years he felt ethically bound to include them as suppliers. When asked to what extent, Quinn indicated at a minimum of 40%, or specifically the Conn. and Cal. locations. The Vertal price is firm for a year. Quinn also understands the potential for product variability and that they may be vulnerable to other problems in a switch to Vertal, but he feels that he must take advantage of a pricing situation that will allow him to reduce his raw material costs by over $200,000. The body filler market, as he indicated, has become very competitive with consequent reductions in their selling prices to the automotive industry. We then indicated that it would be necessary to review this latest pricing situation. At the same time

See Page 2

cc CDR WHS WEN TJK DLB BP

ET002269

ENGELHARD
MINERALS & CHEMICALS DIVISION
MENLO PARK, CN 28, EDISON, NJ

CUSTOMER'S REPORT

☑ Visit
☐ Phone

☐ Attapulgus
☐ Porosel
☐ Kaolin
☐ Catalyst

Firm Name Dynatron
Address Atlanta, GA

Date of Visit 6-15-83
Date of Report 6-22-83
Report No.: 8

Salesman

Personnel

Business

Requirements

Literature
Samples
Mail List

Remarks:

Abdul agreed to make available samples of Vertal's new product for our lab evaluations. After evaluation and discussion of pricing we would get back to them with our response. Meanwhile, a full production trial will be run at the Conn. plant during July. If successful, a bulk trial at Atlanta would follow and finally the California plant would conduct their full production run.

Required Action: Await Menlo Park decision on the above.

jjm/jw

cc

ET002270

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