

**SUPREME COURT OF THE STATE OF NEW YORK
SEVENTH JUDICIAL DISTRICT**

**In Re: Seventh Judicial District
Asbestos Litigation**

**SEVENTH JUDICIAL DISTRICT
ASBESTOS LITIGATION**

This Document Applies to:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONTARIO**

**ANNE M. TINKER, Executrix of the
Estate of TIMOTHY W. TINKER, Deceased,
and Individually as the Surviving
Spouse of TIMOTHY W. TINKER,**

Plaintiff,

CASE NO. 83778

vs.

**A.E. CLEVITE, INC.,;
et al.,**

Defendants

**DEFENDANT MACK TRUCKS, INC'S SUPPLEMENTAL
RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR
INSPECTION AND PRODUCTION OF DOCUMENTS**

Defendant, MACK TRUCKS, INC. ("Mack Trucks"), serves this Supplemental Response to Plaintiff's First Request for Inspection and Production of Documents.

INTRODUCTION AND GENERAL RESPONSE

Supplemental responses provided herein have been prepared pursuant to a reasonable and duly diligent investigation and search for the information requested. In conducting its business, Mack Trucks has each year created thousands of documents that have been kept in numerous locations and have been moved as the

organization changed and as employees changed jobs. Accordingly, Mack Trucks cannot represent that these supplemental responses contained herein provide all information requested; rather, these supplemental responses reflect information obtained before this date by Mack Trucks pursuant to a reasonable and duly diligent search and investigation in those areas where responsive information was expected to be found. To the extent that the request purports to require more, Mack Trucks objects on grounds that include that compliance with the request would impose an undue burden and expense.

These supplemental responses are intended to be accurate to the best of Mack Truck's knowledge and belief as of the time of the service of this supplemental response. To the extent that the supplemental responses are not consistent with any previous responses made in other cases, these supplemental responses are intended to supersede such earlier responses. Mack Trucks reserves the right to supplement these supplemental responses should it discover new information.

Some of the discovery requests ask for "all" documents that may pertain to a subject. Mack Trucks objects to requests for any and all of something on grounds that the requests are overly broad and unduly burdensome.

You have served Mack Trucks with discovery and yet you already may have some pertinent information or documents, perhaps even some information or documents not received from Mack Trucks. Mack Trucks objects on the grounds that it would be less burdensome, more convenient and less expensive for you to identify what documents you already have that fall within the scope of these requests. This

would accomplish several purposes: (a) it would obviate Mack Trucks having to search for and copy documents already in your possession; (b) it would enable Mack Trucks to use the documents provided by you as guides in looking for related material; and (c) it would, if your purposes were to obtain authentication of particular documents, enable Mack Trucks to authenticate the copies provided by you without having to conduct an uninformed search for those documents in Mack Trucks' files.

Mack Trucks further objects to requests where the matter sought is neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

Where Mack Trucks personnel have stored responsive documents, whether kept together by folder, clip, staple, or otherwise, only the responsive document will be produced.

Documents offered by Mack Trucks will be made available by providing marked usable copies for review in the office of Mack Trucks' counsel.

The Plaintiff has sued Mack Trucks, Inc. individually as well as successor to Brockway Inc. Mack Trucks is not a successor to Brockway, Inc. Rather, Brockway Motor Trucks, a division of Mack Trucks is a successor to the Brockway Motor Trucks Co. Brockway Motor Trucks, a division of Mack Trucks, Inc. ceased doing business in 1977. Accordingly, the responses herein pertain to Mack Trucks individually only. Since Brockway Motor Trucks, a division of Mack Trucks ceased doing business in 1977, business records of that entity which are still available for inspection are stored in Hagerstown, Maryland. It is unknown whether such records would reveal

information responsive to this request to produce. As the burden of deriving or ascertaining the responses to this request to produce from a review of such records is substantially the same for plaintiff as it is for Mack Trucks, Mack Trucks will make these documents available for review by Plaintiff. In accord with the applicable rules of civil procedure, Mack Trucks will provide assistance to the Plaintiff in locating and identifying the records at the time of inspection.

DEFINITIONS

As used in Mack Trucks' objections to these requests:

(i) "Lack of Relevance" means that a request calls for information which is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence;

(ii) "Unduly Burdensome" means that it would be oppressive, time consuming or expensive to require Mack to compile and furnish the information in light of the degree of its relevance and materiality, if any;

(iii) "Overly broad" means that such request is overly broad as to scope, time or location;

(iv) "Lack of Particularity" means that a request does not state with reasonable particularity the information to be furnished, is vague and ambiguous or incomprehensible;

(v) "Improper Assumption" means that a request assumes facts which are not true or accurate;

(vi) "Improper Opinion" means that a request improperly calls for an opinion, conclusion, contention or inference;

(vii) "Privileged" means a request calls for information protected by the attorney/client privilege or the work-product doctrine or the rule protecting materials prepared in anticipation of or in connection with litigation; and

(viii) "Premature" means that a request calls for an opinion or contention that relates to fact or the application of law to fact and should not properly be required to be responded to at this time.

These comments and objections are incorporated into each Mack supplemental response set forth below as if they were set forth in their entirety as they apply to each supplemental response. Supplemental responses made after objections are not waivers of objections.

SUPPLEMENTAL RESPONSES

4. All documents identified in response to Interrogatory No. 12C (Plaintiff's First Set of Interrogatories [Product Defendants]).

RESPONSE: Objections: Overly broad, improper assumption. Subject to and without waiving these objections, Mack Trucks states that it is not in possession of any documents responsive to this request and further states that it is not aware of any published studies that establish an association between potential exposure to asbestos from the use of brake, clutch or gasket products with the development of mesothelioma.

6. All documents identified in response to Interrogatory No. 15E (Plaintiff's First Set of Interrogatories [Product Defendants]).

RESPONSE: Objections: Lack of relevance, unduly burdensome, overly broad, lack of particularity, improper assumption, privileged, premature. Furthermore, Mack Trucks states that Workers' Compensation documentation is wholly irrelevant to the prosecution of this action, and the production of same is not reasonably calculated to lead to the discovery of admissible evidence. Mack Trucks does not engage in the manufacture of brake, clutch or gasket products.

Subject to and without waiving these objections, Mack Trucks states that it is not aware of having received a workers' compensation claim from an employee who alleged to have an asbestos-related disease as a result of working at Mack Trucks, Inc.

12. All documents related to any training or workshops conducted by the Defendants for any of their employees regarding the use, handling, or assembly of any asbestos containing component parts contained in or attached to its vehicles or engines component parts including asbestos-containing: (1) brake products, including but not limited to brake shoes and brake linings, brake pads, and brake assemblies, (2) clutch products including but not limited to clutch or clutch facings, and (3) gaskets, utilized in all engines and vehicles other than automobiles.

RESPONSE: Mack Trucks incorporates by reference its objections to this request served in its initial response hereto on January 17, 1997. Subject to and without waiving those objections, Mack Trucks further states that no documents responsive to this request have been located.

Dated: Orlando, Florida
March 13, 1997

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TO: See Attached Service List