



**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 VERIFIED RESPONSES TO
INTERROGATORIES 2, 3, 10, 11, 14 AND 15 OF
PLAINTIFF'S FIRST SET OF INTERROGATORIES
[PRODUCT DEFENDANTS]**

Defendant, MACK TRUCKS, INC. ("Mack Trucks"), serves this response to Interrogatories 2, 3, 10, 11, 14 and 15 of Plaintiff's First Set of Interrogatories.

INTRODUCTION AND GENERAL RESPONSE

Plaintiff incorporates by reference Defendant, Mack Trucks' General Objection to Plaintiff's First Set of Interrogatories entitled Product Defendants served December 3, 1996. Subsequent to the service of that general objection, Plaintiff's counsel

requested that Mack Trucks serve a response to Interrogatories 2, 3, 10, 11, 14 and 15 of the Plaintiff's First Set of Interrogatories. Plaintiff maintains that Mack Trucks need not respond to Interrogatories 1, 4, 5, 6, 7, 8, 9, 12 and 13. Accordingly, the following responses are only answers to Interrogatories 2, 3, 10, 11, 14 and 15.

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 the responses contained herein provide all information requested; rather, these 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 answers are intended to be accurate to the best of Mack Truck's knowledge and belief as of the time of the service of this answer. To the extent that they are not inconsistent with any previous answers made in other cases, these answers are intended to supersede such earlier answers. Mack Trucks reserves the right to supplement these answers should it discover new information.

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 information or 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 information already in your possession; (b) it would enable Mack Trucks to use any documents or other information provided by you as guides in looking for related material; and © 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 these interrogatories where the matters inquired of are neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

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 answers 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 these interrogatories. As the burden of deriving or ascertaining the

answers to these interrogatories from a review of such records is substantially the same for plaintiffs 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 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 response set forth below as if they were set forth in their entirety as they apply to each response. Responses made after objections are not waivers of objections.

RESPONSES

2. CORPORATE INFORMATION

State the following:

- A. Defendant's correct corporate name;
- B. State of your incorporation;
- C. Address of your principal place of business;
- D. Dates and time period during which defendant held a certificate of authority to do business in the State of New York;
- E. Dates and time period during which defendant regularly conducted business in New York.

RESPONSE:

Objections: Overly broad, lack of particularity. Subject to and without waiving these objections, Mack Trucks states that its corporate name is Mack Trucks, Inc. Mack Trucks is a Pennsylvania corporation with its principal place of business in

Allentown, Pennsylvania. Mack Trucks was issued a Certificate of Authority to do business in the State of New York on December 23, 1974.

3. CORPORATE HISTORY

A. Describe in detail Defendant's complete corporate or business history for all business entities that were involved, in any manner, in the sale, manufacture, and/or distribution of asbestos and/or asbestos containing products.

B. State whether or not you have or have had subsidiary or predecessor corporation(s), and if so:

- (1) The name of the subsidiary and/or predecessor;
- (2) Its date(s) of incorporation, if a corporation;
- (3) Its state(s) of incorporation;
- (4) Its corporate purposes;
- (5) Whether the subsidiary or predecessor was involved in any manner in the sale, manufacture, and/or distribution of asbestos-containing products
 - (a) The years that the subsidiary or predecessor was involved in the sale, manufacture, and/or distribution of asbestos-containing products.
 - (b) A description of the nature or type of asbestos that the subsidiary or predecessor sold, manufactured, or distributed.

RESPONSE:

Objections: Lack of relevance, unduly burdensome, overly broad, lack of particularity. Subject to and without waiving these objections, Mack Trucks states that it has never been involved in the sale, manufacture, distribution and/or mining of asbestos. Mack Trucks has never manufactured any asbestos-containing brake, clutch

or gasket products. Mack Trucks is in the business of selling trucks and their component parts. During the 1970-1980 time period, some brake, clutch and gasket parts utilized in the assembly of its trucks contained chrysotile asbestos encapsulated with binders and resins.

Subject to and without waiving these objections, Mack Trucks' corporate history is as follows:

International Motor Truck, a New York corporation, was organized on November 8, 1916. Its corporate name was changed to Mack Trucks, Inc. on March 22, 1922. In 1956, Mack Trucks, Inc. purchased Brockway Motor Trucks Company and Brockway Motor Trucks became a division of Mack Trucks, Inc. on October 1, 1956. In 1977, Brockway Motor Trucks, a division of Mack Trucks, Inc., ceased conducting business.

On July 20, 1967, Mack Trucks, Inc. established a wholly-owned subsidiary, Hamubo Trucks, Inc., a Delaware corporation; the corporate name of Hamubo Trucks, Inc. was changed to Mack Trucks, Inc. on August 21, 1967.

Effective August 31, 1967, Mack Trucks, Inc., the parent New York corporation, transferred all of its property and assets, except its stock in such subsidiary, to Mack Trucks, Inc., the Delaware corporation.

On September 1, 1967, Mack Trucks, Inc., the New York corporation, was merged with and into Signal Oil and Gas Company, with the result that Mack Trucks, Inc., the Delaware corporation, became a wholly-owned subsidiary of Signal Oil and

Gas Company. Mack Trucks, Inc., the New York corporation, ceased to exist as a result of the merger.

On December 10, 1974 Mack Trucks, Inc. established a wholly-owned subsidiary, Herodo Trucks, Inc., a Pennsylvania corporation; the corporate name of Herodo Trucks, Inc. was changed to Mack Trucks, Inc. on December 19, 1974.

Effective January 1, 1975, Mack Trucks, Inc., the Delaware corporation, was merged with and into Mack Trucks, Inc. the Pennsylvania corporation.

On August 2, 1983, the Signal Companies, Inc., a successor of the Signal Oil and Gas Company, spun off Mack Trucks in a public offering. The present Mack Trucks, Inc., the Pennsylvania corporation, is a wholly-owned subsidiary of Renault-V.I.

10. ASBESTOS FREE PRODUCTS

For each asbestos containing product identified in Interrogatory Answer No. 7 and 8, state:

- A. Was the product, or a substitute for that product, ever manufactured and/or sold by you without asbestos; if so, when did the manufacture and/or sale of the product commence;
- B. The brand name of the asbestos free product;
- C. The reason product was manufactured without asbestos;
- D. Was the asbestos-containing counterpart of the product manufactured and/or sold while the asbestos-free counterpart was being manufactured and/or sold, and, if so, provide the time periods.

RESPONSE:

Objections: Unduly burdensome, overly broad, lack of particularity. Subject to and without waiving these objections, Mack Trucks states that Mack Trucks did not manufacture brake, clutch or gasket products that were used in the assembly of new trucks or which were sold for use as replacement parts. Replacement or "after market" brake, clutch and gasket products were purchased by Mack Trucks from its suppliers of such components. They were then distributed to its sales branches or to independent dealers, who were not agents or employees of Mack, who would then sell them to the customer. Depending on the design of the truck, as well as the specific time frame, brake products installed in the assembly of new trucks or sold as replacement parts may not have contained asbestos at all or may have contained encapsulated chrysotile asbestos. Non-asbestos-containing brake linings, manufactured by Mack's suppliers and sold to Mack Trucks, which then installed them in the assembly of new trucks or distributed them to sales branches or to independent dealers for sale as replacement parts, were available beginning in 1979. Upon all information available, the supplier of non-asbestos-containing brake linings during the 1979-1980 time frame was Molded Materials Division-Carlisle Corporation.

As for gasket products used in the assembly of new trucks or sold as replacement gasket products, Mack Trucks states that many gaskets sold for use in its engines during the 1970-1980 time frame did not contain asbestos at all depending on the engine and the application of the gasket product while others contained encapsulate chrysotile asbestos. Upon all information available, non-asbestos-

containing gasket products were supplied to Mack Trucks from the following suppliers: Armstrong Cork Company, Fel-Pro, Inc., Mitchell & Smith, Mundet, Vellumoid Division of Federal-Mogul Corporation and Victor Gasket & Manufacturing Company.

Mack Trucks' investigation is ongoing to determine the particular suppliers who may have supplied non-asbestos-containing clutch products during the years 1970 to 1980 and that this answer will be supplemented.

11. KNOWLEDGE/ASBESTOSIS - LUNG CANCER - MESOTHELIOMA

A. State whether Defendant obtained, prior to 1980, any knowledge concerning the association, if any, between the inhalation of asbestos fibers and: (1) asbestosis; (2) lung cancer; (3) mesothelioma. If so, state as to (1) asbestosis; (2) lung cancer; (3) mesothelioma:

- (1) When this knowledge was first acquired;
- (2) How it was acquired;
- (3) Identify by whom it was acquired;
- (4) State the substance of the knowledge acquired.

B. Identify all documents relevant to your acquisition of knowledge concerning the disease and the custodian thereof.

RESPONSE:

Objections: Lack of relevance, unduly burdensome, overly broad, lack of particularity, privileged, premature. Subject to and without waiving these objections, Mack Trucks states that it did not and still does not have any knowledge of an association between potential asbestos exposure from the use of brake, clutch or gasket products with the development of mesothelioma.

14. TRADE ASSOCIATION

A. State the names and addresses of all professional, industrial, health and safety organizations to which you have belonged which have anything to do with the health effects of asbestos, the proper methods of working with asbestos, methods of controlling asbestos dust, setting of standards or regulations, information, lobbying, research, engineering, or use of asbestos products, materials, or fibers.

B. As to each trade association, state the date of membership.

RESPONSE:

Objections: Unduly burdensome, overly broad, lack of particularity, improper assumption, premature. Subject to and without waiving these objections, Mack Trucks, Inc. states that it or Mack employees or both have had memberships in various organizations at different time periods. Upon all information, Mack Trucks states that it has not been a member of any particular health and safety organization whose specific purpose concerns health effects of asbestos.

15. WORKMEN COMPENSATION CLAIMS

Have you had any claims of employees alleging injury due to asbestos exposure? If so, state:

- A. The date the claim was filed;
- B. The type and description of the injury claimed;
- C. The name of the claimant;
- D. The disposition of the claim;
- E. Identify and produce all documents relating to each workmen compensation claim.

RESPONSE:

Objections: Lack of relevance, unduly burdensome, overly broad, lack of particularity, improper assumption, privileged, premature. Furthermore, Mack Trucks states that Workers' Compensation claims, if any, made by its employees are wholly irrelevant to the prosecution of this action and are not reasonably calculated to lead to 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.

Dated: Orlando, Florida
March 13, 1997

CHRIS N. KOLOS, ESQUIRE
Florida Bar No.: 438235
MAGUIRE, VOORHIS & WELLS, P.A.
Two South Orange Plaza
2 South Orange Avenue
Post Office Box 633
Orlando, Florida 32802-0633
Phone: (407) 244-1100
Fax: (407) 423-8796

Attorneys for Defendant, MACK TRUCKS, INC.

TO: See Attached Service List

VERIFICATION

Commonwealth
STATE OF Pennsylvania

COUNTY OF LEHIGH

Thomas F. Brown, being duly sworn on oath, deposes and states that he/she is ^{SA}Staff Engineer for the Defendant, Mack Trucks, Inc.; that he/she signed Mack Trucks, Inc.'s Responses to Interrogatories 2, 3, 10, 11, 14 and 15 of Plaintiff's First Set of Interrogatories [Product Defendants] on behalf of said Defendant, and is duly authorized to do so; that the matters stated in Mack Trucks, Inc.'s Responses to Interrogatories 2, 3, 10, 11, 14 and 15 of Plaintiff's First Set of Interrogatories [Product Defendants] are not within the personal knowledge of deponent and that deponent is informed that there is no one officer or employee of Mack Trucks, who has personal knowledge of all such matters; the facts stated in Mack Trucks, Inc.'s Responses to Interrogatories 2, 3, 10, 11, 14 and 15 of Plaintiff's First Set of Interrogatories [Product Defendants] have been assembled by authorized employees and counsel of said Defendant, and deponent is informed by those persons that the facts stated in the foregoing document are true; and that Mack Trucks, Inc. reserves the right to amend any of the foregoing answers if facts become known that make such amendment appropriate.



MACK TRUCKS, INC.

SWORN TO AND SUBSCRIBED
before me this 12th day of
March, 1997.

Helen Jane Cook
Notary Public

My Commission Expires: Sept. 7 1998

