



IN THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY,
OHIO

ANTHONY MARIO GRECO, et al.

Plaintiffs,

v.

A-BEST PRODUCTS COMPANY, et al.

CASE NUMBERS: 323629-323678
(HANNA, J.)

IN RE: ALL BARON & BUDD
ASBESTOS CASES

MALLINCKRODT INC.'S RESPONSES TO
PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS
Cuyahoga County, Ohio
Greco

Defendant Mallinckrodt Inc. ("Mallinckrodt") (named herein as International Minerals & Chemical Corporation), on behalf of its former E.J. Lavino Division ("Lavino Division"), responds to Plaintiffs' Request for Production of Documents as follows:

GENERAL OBJECTIONS

Mallinckrodt generally objects to Plaintiffs' Request for Production of Documents as set forth in subparagraphs (a) through (g) below. General Objections (a) through (c) and (e) shall be deemed to be interposed to each Request only as indicated in response to individual Requests, unless the context indicates otherwise. General Objections (d), (f) and (g) apply with respect to all responses of Mallinckrodt, regardless of whether or not these Objections are repeated in response to individual Requests. To the extent that Mallinckrodt has objected, it respectfully refuses to produce any documents covered by the objection(s).

(a) Defendant's Business: Mallinckrodt was never in the business of mining, processing or selling asbestos or in the business of manufacturing or selling asbestos-containing insulation. Mallinckrodt did not produce and sell asbestos; it did not manufacture or sell

asbestos-containing insulation. Mallinckrodt marketed for a period of time, but not since February 1974, various refractory products through its former Lavino Division. The operations of this Division, discontinued effective February 28, 1974, are the only Mallinckrodt operations arguably placed at issue by plaintiffs' claims. The Lavino Division manufactured and supplied refractory brick and refractory specialty products for the linings of industrial furnaces and vessels used in the production of iron, steel and other substances. The Lavino Division only manufactured one product whose product mix included asbestos. This refractory product, Plastic K-N, as sold by the Lavino Division, contained less than 1% chrysotile asbestos for just over seven years. Many of Plaintiffs' Requests have little, if any, applicability to Mallinckrodt as a company that did not make or sell asbestos-containing insulation products and, accordingly, are overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

(b) Relevant time period: Mallinckrodt objects to the extent that Plaintiffs' Requests seek documents about matters occurring or alleged to have occurred after February 28, 1974, which is the date by which the Lavino Division effectively ceased manufacturing or selling any products. Mallinckrodt objects to the extent that Plaintiffs' Requests seek documents about company operations prior to December 30, 1966, after which Mallinckrodt, through the Lavino Division, first entered into the refractories business.

(c) Plaintiffs' Definitions: Unless otherwise indicated, Mallinckrodt responds herein with respect to the operations of its former Lavino Division - the only operations of Mallinckrodt arguably at issue. Mallinckrodt objects to Definition 1, and any other Definition, to the extent that it purports to impose upon Mallinckrodt an obligation to produce documents relating to the activities of any divisions, subsidiaries, affiliates or other operations unrelated to the business of

the Lavino Division. No such entity was connected with the research, development, manufacture, sale or distribution of any product placed at issue by plaintiffs.

(d) Production of Documents and Persons: For purposes of documents Mallinckrodt agrees to produce herein, Mallinckrodt will to copy and forward to plaintiffs' counsel all such documents at plaintiffs' expense. Mallinckrodt undertakes no responsibility to attempt to identify documents either discarded in the normal course of its business or transferred with the sale of its former Lavino Division since it would not be reasonably possible to do so and would be needlessly burdensome to attempt to do so.

(e) Non-asbestos Matters: Mallinckrodt objects to responding to any Requests regarding matters related to injuries alleged to have resulted from exposure to substances other than asbestos. Since this litigation concerns claims alleging injurious exposure to asbestos, inquiries concerning exposure to other substances are overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

(f) Privilege: To the extent that Plaintiffs' Requests purport to encompass (1) confidential communications between Mallinckrodt and its retained counsel or (2) materials developed or obtained by Mallinckrodt in anticipation of or after inception of litigation for purposes of defense of that litigation, Mallinckrodt declines to identify or provide information concerning such communications or materials since they are privileged from disclosure.

(g) Terms Used: Mallinckrodt does not adopt or employ the definitions given to various terms by plaintiffs. Terms used by Mallinckrodt in its responses are meant to be accorded their normal meaning, unless otherwise indicated.

RESPONSE TO REQUEST NO. 1:

Subject to and without waiving its General Objections Nos. (b) and (c), Mallinckrodt states that it has no photographs of the two products sold by its former Lavino Division with any asbestos content.

RESPONSE TO REQUEST NO. 2:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent it applies to jobsites at which no plaintiff who has sued Mallinckrodt worked during or within a reasonable period after the operation of the former Lavino Division. Subject to and without waiving its objections, Mallinckrodt states that it will produce any such documents for jobsites listed on Exhibit A at which plaintiffs who have sued Mallinckrodt worked during or within a reasonable period after the operation of the former Lavino Division. Mallinckrodt has yet to receive any designation of jobsites specific to plaintiffs who have sued Mallinckrodt or an indication of when those plaintiffs worked at such jobsites. As plaintiffs identify additional work sites in their Answers to Interrogatories, Mallinckrodt will supplement this response with sales records, if any, for such sites.

RESPONSE TO REQUEST NO. 3:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The Request is not reasonably designed to elicit information concerning the sale to, or use at, jobsites at issue with respect to this Defendant of any product made or sold by this Defendant with any asbestos. Subject to and without waiving its objections, Mallinckrodt states that it will produce any records of its that

document any sale by another company to any jobsites properly designated with respect to it of any product made or sold by it with any asbestos.

RESPONSE TO REQUEST NO. 4:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence for the reasons stated in response to Request No. 2. Subject to and without waiving its objections, Mallinckrodt states that it will produce any such documents for jobsites listed on Exhibit A at which plaintiffs who have sued Mallinckrodt worked during or within a reasonable period after the operation of the former Lavino Division.

RESPONSE TO REQUEST NO. 5:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The Request is not designed to elicit information concerning the sale to, or use at, the referenced jobsites of any product made or sold by this Defendant with any asbestos. Subject to and without waiving its objections, Mallinckrodt states that it does not believe that any distributor or marketer would have sold either of the two products supplied by Mallinckrodt with an asbestos content to the referenced jobsites. For the types of sites listed in Exhibit A, Mallinckrodt typically directly sold its products.

RESPONSE TO REQUEST NO. 6:

Mallinckrodt has no such documents.

RESPONSE TO REQUEST NO. 7:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence for the reasons stated in

General Objection Nos. (b) and (e) and in response to Request No. 2. Subject to and without waiving its objections, Mallinckrodt states that it will produce any such documents that relate to asbestos exposure or sale or use of products containing asbestos for jobsites designated as at issue with respect to Mallinckrodt.

RESPONSE TO REQUEST NO. 8:

Mallinckrodt incorporates by reference its Answers to Interrogatory Nos. 14 and 17.

RESPONSE TO REQUEST NO. 9:

Mallinckrodt incorporates by reference its Answers to Interrogatory Nos. 18 and 18.1. Mallinckrodt has not located any documents of this nature relating to the tiny chrysotile asbestos content of the two products listed in response to Interrogatory No. 5.

RESPONSE TO REQUEST NO. 10:

Mallinckrodt incorporates by reference its Answers to Interrogatory Nos. 18 and 18.1. Mallinckrodt has not located any documents of this nature relating to the tiny chrysotile asbestos content of the two products listed in response to Interrogatory No. 5.

RESPONSE TO REQUEST NO. 11:

Mallinckrodt incorporates by reference its Answers to Interrogatory Nos. 18 and 18.1. Mallinckrodt has not located any documents of this nature relating to the tiny chrysotile asbestos content of the two products listed in response to Interrogatory No. 5.

RESPONSE TO REQUEST NO. 12:

Mallinckrodt incorporates by reference its Answer to Interrogatory No. 22. Mallinckrodt has not located any documentation regarding testing of this nature.

RESPONSE TO REQUEST NO. 13:

Kaiser Aluminum incorporates by reference its Answer to Interrogatory Nos. 18 and 22. Mallinckrodt has not located any documents regarding testing of this nature.

RESPONSE TO REQUEST NO. 14:

Kaiser Aluminum incorporates by reference its Answer to Interrogatory No. 24. Mallinckrodt has not located any documents regarding testing of this nature.

RESPONSE TO REQUEST NO. 15:

Kaiser Aluminum incorporates by reference its Answer to Interrogatory No. 31. Mallinckrodt has not located any documents regarding testing of this nature.

RESPONSE TO REQUEST NO. 16:

Mallinckrodt objects to this Request as overly broad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Mallinckrodt states that it will produce any available representative sales literature concerning any product listed in response to Interrogatory No. 5 that is specifically identified as a source of any plaintiff's exposure.

RESPONSE TO REQUEST NO. 17:

Mallinckrodt has not located any warnings with respect to either of the products listed in response to Interrogatory No. 5. See Answer to Interrogatory No. 41.

RESPONSE TO REQUEST NO. 18:

Mallinckrodt objects to this Request as overly broad, unduly vague and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Mallinckrodt states that it will produce any available representative sales literature

regarding the intended use or maintenance of any product listed in response to Interrogatory No. 5, as long as such product is specifically identified as a source of any plaintiff's exposure.

RESPONSE TO REQUEST NO. 19:

Despite diligent search, Mallinckrodt has not located any such notice.

RESPONSE TO REQUEST NO. 20:

Mallinckrodt objects to this Request as overly broad, unnecessarily vague, ambiguous and requesting speculation and/or its legal opinion as to which persons may have "knowledge of relevant facts" in this litigation. Mallinckrodt also objects to this Request as seeking disclosure of privileged work product information. Mallinckrodt further objects to this Request since it cannot intelligently respond to the Request without plaintiffs specifying in more detail on a plaintiff-by-plaintiff basis the grounds for each claim asserted against it.

RESPONSE TO REQUEST NO. 21:

Subject to and without waiving its General Objection Nos. (b) and (c), Mallinckrodt states that, despite diligent search, it has not located any such documents.

RESPONSE TO REQUEST NO. 22:

Mallinckrodt incorporates by reference its Answer to Interrogatory No. 53.

RESPONSE TO REQUEST NO. 23:

Mallinckrodt incorporates by reference its Answer to Interrogatory No. 56.

RESPONSE TO REQUEST NO. 24:

Despite diligent search, Mallinckrodt has not located any such notice.

RESPONSE TO REQUEST NO. 25:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably

calculated to lead to the discovery of admissible evidence. Mallinckrodt also incorporates by reference its General Objection Nos. (b) and (c). Subject to and without waiving its objections, Mallinckrodt states that, despite diligent search, it has not located any such communication during the relevant period to any defendant concerning either (1) sale or use of any product that contained asbestos to or at any relevant jobsite or (2) any health hazards associated with long-term exposure to asbestos-containing products.

RESPONSE TO REQUEST NO. 26:

Mallinckrodt objects to this Request as overly broad, unduly vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence. Mallinckrodt also incorporates by reference its General Objection Nos. (b), (c) and (e). Subject to and without waiving its objections, Mallinckrodt states that, despite diligent search, it has not located any such documents generated during the relevant period that addressed the subject of health hazards potentially associated with the workplace use of asbestos-containing products.

RESPONSE TO REQUEST NO. 27:

Mallinckrodt objects to this Request as overly broad, burdensome, not reasonably calculated to lead to the discovery of admissible evidence and relating to reports readily available to plaintiffs from other sources. Subject to and without waiving its objections, Mallinckrodt states that it will produce a copy of its most recent annual report.

RESPONSE TO REQUEST NO. 28:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Mallinckrodt also incorporates by reference its General Objection Nos. (a)-(c) and (e). Subject to and without waiving its

objections, Mallinckrodt states that, despite diligent search, it has not located any such documents that were generated during the relevant period and that specifically concern use of asbestos or asbestos-containing products in the workplace.

RESPONSE TO REQUEST NO. 29:

Mallinckrodt objects to this Request as overly broad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Mallinckrodt also incorporates by reference its General Objection Nos. (a)-(c) and (e). Subject to and without waiving its objections, Mallinckrodt states that, despite diligent search, it has not located any such documents that were generated during the relevant period and that specifically concern use of asbestos or asbestos-containing products in the workplace.

RESPONSE TO REQUEST NO. 30:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt states that, despite diligent search, it has not located any such documents that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 31:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt states that, despite diligent search, it has not located any such documents that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 32:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt states that, despite diligent search, it has not located any such documents that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 33:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt states that, despite diligent search, it has not located any such documents that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 34:

Subject to and without waiving its General Objection Nos. (b) and (c), Mallinckrodt states that, despite diligent search, it has not located any such documents which concern asbestos that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 35:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt states that, despite diligent search, it has not located any such documents that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 36:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt states that, despite diligent search, it has not located any such documents that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 37:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt states that, despite diligent search, it has not located any such documents which concern asbestos that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 38:

Subject to and without waiving its General Objection Nos. (b), (c) and (e), Mallinckrodt

states that, despite diligent search, it has not located any such documents which concern asbestos that were received or generated by it prior to or during the relevant period.

RESPONSE TO REQUEST NO. 39:

Subject to and without waiving its General Objection Nos. (b) and (c), Mallinckrodt states that, despite diligent search, it has not located any such photographs, prints or visual depictions of any product as made or sold by it with any asbestos.

RESPONSE TO REQUEST NO. 40:

Mallinckrodt incorporates by reference its Answer to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 41:

Mallinckrodt incorporates by reference its Answer to Interrogatory No. 3.

RESPONSE TO REQUEST NO. 42:

Mallinckrodt objects to this Interrogatory as overly broad, vague and seeking privileged work product information. Subject to and without waiving its objections, Mallinckrodt incorporates by reference its Answer to Interrogatory No. 55.1.

RESPONSE TO REQUEST NO. 43:

Mallinckrodt objects to this Request as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence and seeking transcripts not under its control or in its possession. Subject to and without waiving its objections, Mallinckrodt states that it has not made a determination as to which witnesses it might call to testify at any particular trial in this litigation. With respect to any existing employee who might be called to testify at trial, Mallinckrodt will provide an identification of transcripts of any known testimony by that employee in any tort case alleging personal injury from exposure to asbestos.

RESPONSE TO REQUEST NO. 44:

Mallinckrodt has no records of treating physicians other than those generated during discovery in this litigation.

RESPONSE TO REQUEST NO. 45:

Mallinckrodt objects to this Request as overly broad, burdensome, not reasonably calculated to lead to the discovery of admissible evidence and requesting privileged work product information.

RESPONSE TO REQUEST NO. 46:

Mallinckrodt objects to this Request as improperly seeking privileged work product material to the extent it extends to witness statements obtained under the direction of Mallinckrodt's counsel during investigation or defense of this litigation. Subject to and without waiving its objections, Mallinckrodt states that it has no statements by any plaintiffs other than any provided during discovery in this litigation.

RESPONSE TO REQUEST NO. 47:

Mallinckrodt objects to this Request as seeking privileged work product information to the extent it seeks production of any photographs or video tape obtained under the supervision of Mallinckrodt's counsel during investigation or defense of this litigation. Subject to and without waiving its objections, Mallinckrodt states that it does not have any such non-privileged items other than any obtained during formal discovery in this litigation.

RESPONSE TO REQUEST NO. 48:

Mallinckrodt objects to this Request as overly broad, vague and ambiguous. Subject to and without waiving its objections, Mallinckrodt states that it does not have any work records of

any plaintiffs other than any produced during formal discovery in this litigation.

RESPONSE TO REQUEST NO. 49:

Mallinckrodt objects to this Request as overly broad, unduly vague, ambiguous, nonsensical and requesting speculation and/or legal opinion by Mallinckrodt as to "insurance that may cover the claims in this case." Subject to and without waiving its objections, Mallinckrodt states that there is no litigation between it and any insurer regarding the nature or existence of any policies of insurance that might be involved for purposes of this litigation.

RESPONSE TO REQUEST NO. 50:

Mallinckrodt objects to this Request as overly broad, vague and improperly seeking creation of a document or documents not already in existence. Mallinckrodt also objects to this Request as seeking disclosure of privileged work product or attorney/client information. Subject to and without waiving its objections, Mallinckrodt states that it not aware of any specific document of Mallinckrodt generated prior to or during the relevant period being withheld on the grounds of privilege.

RESPONSE TO REQUEST NO. 51:

Mallinckrodt objects to this Request as overly broad, vague and improperly seeking creation of a document or documents not already in existence. Mallinckrodt also objects to this Request as seeking disclosure of privileged work product or attorney/client information. Subject to and without waiving its objections, Mallinckrodt states that it has not objected to any particular request for production simply because the document requests were "too voluminous."

RESPONSE TO REQUEST NO. 52:

Mallinckrodt objects to this Request as unnecessarily and improperly invading the

attorney-client privilege and relating to information privileged from discovery. The specific manner in which Mallinckrodt gathers information to respond to these Document Requests and the identity of, and information supplied by, persons consulted in this regard are privileged. Subject to and without waiving its objections, Mallinckrodt states that the ongoing investigation and discovery concerning these Requests is performed by counsel for Mallinckrodt based upon (1) information provided by present or former employees of Mallinckrodt and (2) based upon a review of pertinent corporate records.

Respectfully Submitted,

By: 

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INT'L. MINERAL & CHEMICAL