

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SCOTT D. McCLURG, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:12CV00361 AGF
)	
MALLINCKRODT, INC., et al.,)	Lead Case for Pretrial Proceedings
)	
Defendants.)	

MEMORANDUM AND ORDER

This toxic tort action is now before the Court on the motion of Plaintiffs in the three following cases which have been consolidated with this Lead Case for pretrial proceedings, for leave to file second amended complaints:

Schneider v. Mallinckrodt, Inc., No. 4:13CV00751
Vorce v. Mallinckrodt, Inc., No. 4:13CV01160
Lang v. Mallinckrodt, Inc., No. 4:13CV01483

The proposed amendments allege exposure levels to Plaintiffs exceeding the federal dose limits, allegations Plaintiffs contend are now supported by expert reports they have obtained. Two of the five remaining Defendants have filed an objection to the motion for leave. They maintain that the proposed amendment would be futile, and that even with the new allegation, the three complaints would be subject to dismissal for failure to state a claim, because they do not contain sufficient information regarding the dates or duration of exposure, the locations of exposure, the chemicals or substances involved, or the type of exposure (e.g., air, soil, or water). Thus, according to the two objecting Defendants, the proposed amendments only address the federal dose limit and ignore the other deficiencies

argued by Defendants in their respective motions to dismiss the first amended complaints in the three actions.

Pursuant to Federal Rule of Civil Procedure 15(a)(2), courts should grant leave to amend a pleading “freely . . . when justice so requires.” The Court believes that here, Plaintiffs should be permitted to amend their complaints as proposed.


Pursuant to the Order of Consolidation consolidating the above three cases with this Lead Case for pretrial matters, pleadings defined in Federal Rule of Civil Procedure 4(a) are to be filed in the original case, rather than in the Lead Case.

Accordingly,

IT IS HEREBY ORDERED that the motion of Plaintiffs in the three above-listed cases to file second amended complaints is **GRANTED**. (Doc. No. 181.)

IT IS FURTHER ORDERED that the Clerk of Court shall separate the proposed second amended complaints that are attached as exhibits to Plaintiffs’ motion and docket them as Second Amended Complaints, each in the appropriate action listed above.

IT IS FURTHER ORDERED that Defendants’ motions to dismiss the first amended complaints in the three actions listed above are **DENIED** without prejudice to Defendants refiling, by incorporation or otherwise, motions to dismiss the second amended complaints in these actions. (Doc. Nos. 170, 171, 173.)



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 4th day of April, 2014.