

EICHEN CRUTCHLOW & MCELROY, LLP

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Attorneys for Plaintiff

DEBORAH FELLNER,

Plaintiff,

vs.

TRI-UNION SEAFOODS, L.L.C.,
d/b/a/ CHICKEN OF THE SEA,

Defendant.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Civil Action 2:06-cv-00688-DMC-MF

Dockets.Justia.com

**PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS ADDRESSED TO DEFENDANT**

Plaintiff, Deborah Fellner, hereby requests that the Defendant produce the documents hereinafter described for inspection and copying by Plaintiff's counsel within thirty (30) days after service of these requests at the offices of EICHEN CRUTCHLOW & MCELROY, LLP, 40 Ethel Road, Edison, NJ 08817, or at such other place and time upon which counsel may agree.

I. DEFINITIONS

1. "Tri-Union" or the "Company" means Defendant TRI-UNION SEAFOODS, L.L.C., d/b/a/ CHICKEN OF THE SEA and all of its predecessors, successors, parents, subsidiaries, divisions, affiliates, or anyone acting or purporting to act on its behalf, including any of its respective directors, officers, managing agents, agents, employees, attorneys, accountants, or other representatives.

2. The term “communications” refers to any exchange of information by any means of transmission, including, but not limited to, face-to-face conversations, mail, electronic mail, telegram, overnight delivery, telephone, facsimile or telex.

3. The term “documents” means documents whether fixed in tangible medium or electronically stored on disk or tape. The word “documents” shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, reports, studies, press releases, comparisons, books, accounts, checks, audit and video recordings, pleadings, testimony, articles, bulletins, pamphlets, brochures, questionnaires, surveys, charts, newspapers, calendars, desk calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes of meetings, corporate minutes, orders, resolutions, agendas, memorials or notes or oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, deal memoranda, transcriptions of audio or video recordings, computer tapes, computer diskettes or disks, or any other tangible things on which any handwriting, typing, printing, photo-static, electronic or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies or other unique copies of the foregoing and all versions or drafts thereof, whether used or not, and includes all attachments.

4. The following rules of construction shall apply to all discovery requests:

- (a) All/Each. The terms “all” and “each” shall be construed as “all and each”;

- (b) And/Or. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope; and
- (c) The use of the singular form of any word includes the plural and vice versa.

5. The term “person” means any individual, corporation, partnership, firm, association, government agency or other organization recognizable at law, and its agents and employees.

6. The term “concerning” means relating to, referring to, describing, evidencing, or constituting. Requests for documents “concerning” any subject matter include documents concerning communications regarding that subject matter.

7. The term “mercury” includes methylmercury, elemental or metallic mercury, inorganic mercury compounds, and organic mercury compounds.

II. INSTRUCTIONS

1. You are requested to produce all documents described below that are in your possession, custody, or control or in the possession, custody or control of your predecessors, successors, parents, subsidiaries, divisions, or affiliates, directors, officers, managing agents, employees, attorneys, accountants or other representatives. The documents are to be produced in the form and in the same order within each file in which they were located prior to production. The file folders, boxes, binders, or other containers in which such documents are found are also requested to be produced intact,

including the title, labels, or other description of each such folder, box, binder, or container.

2. Defendant shall produce the original of each document described below or, if the original is not in its custody, then a copy thereof, and in any event, all non-identical copies which differ from the original or from the other copies produced for any reason, including, but not limited to, the making of notes thereon.

3. If production of a document is withheld pursuant to a claim of privilege, as to each such withheld document, state the following information:

- (a) Which privilege is claimed;
- (b) A precise statement of the facts upon which said claim of privilege is based; and
- (c) The following information describing each purportedly privileged document:
 - (i) its nature, *e.g.*, agreement, letter, memorandum, etc.;
 - (ii) the date it was prepared;
 - (iii) the date it bears;
 - (iv) the date it was sent;
 - (v) the date it was received;
 - (vi) the identity of the person preparing it;
 - (vii) the identity of the person sending it;
 - (viii) the identity of each person to whom it was sent or was to have

been sent, including all addresses and all recipients of copies;

(ix) a statement as to whom each identified person represented or purported to represent at all relevant times; and

(x) a precise description of the place where each copy of that document is kept, including the title or description of the file in which said document may be found and the location of such file.

4. Whenever a document is not produced in full or is produced in redacted form, so indicate on the document and state with particularity the reason(s) it is not being produced in full and describe to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document which are not being produced.

5. If a document responsive to these requests was at any time in any Defendant's possession, custody or control but now is no longer available for production, as to each such document state the following information:

- (a) whether the document is missing or lost;
- (b) whether it has been destroyed;
- (c) whether the document has been transferred or delivered to another person or entity and, if so, at whose request;
- (d) whether the document has been otherwise disposed of; and
- (e) a precise statement of the circumstances surrounding the disposition of the document and the date of the document's disposition.

III. DOCUMENTS TO BE PRODUCED BY DEFENDANT

1. All documents concerning mercury in tuna fish.
2. All documents concerning mercury in Tri-Union's tuna fish products.
3. All documents relating to investigations concerning mercury in tuna fish.
4. All transcripts of testimony, including transcripts of hearings or depositions, given by Tri-Union in any other law suit concerning the presence of mercury in Tri-Union's tuna fish products, or other tuna fish.
5. All documents produced in all prior litigations concerning mercury in Tri-Union's tuna fish products.
6. All transcripts of testimony, including transcriptions of formal or informal hearings, interviews or depositions, written statements or testimony, affidavits, and summaries of any such testimony given by Tri-Union to any Government entity referring or relating to the presence of mercury in tuna fish.
7. All documents that comprise, evidence, refer, or relate to any communications or meetings between Tri-Union and any competitor, the Food and Drug Administration (FDA), or anyone, including consumers, concerning mercury in tuna fish.
8. All documents that comprise, evidence, refer or relate to any representations, whether written or oral, through print or other media, to consumers of Tri-Union tuna fish products relating to the presence of mercury in the tuna fish.
9. All documents concerning testing for mercury in Tri-Union's tuna products.
10. All documents that analyze, evaluate, or summarize information referring or relating to the costs, development, production, manufacture, distribution, marketing, promotion or sale of Tri-Union tuna fish products containing a warning label advising of the presence of mercury in Tri-Union tuna fish products.
11. All documents referring, relating to, or reflecting any internal discussion, review, dissemination, analysis, or study at Tri-Union concerning the presence of mercury in tuna fish.

12. All documents referring, relating to, or reflecting any communications with anyone outside of Tri-Union concerning the presence of mercury in tuna fish, including but not limited to, other tuna fish manufacturers, trade associations, interest groups, affiliates, and anyone in government.
13. All documents (including any attachments thereto) referring, relating to, or reflecting any public comments made by Tri-Union or others on its behalf, including responses, hearing transcripts, testimony, and complaints regarding the presence of mercury in tuna fish.
14. All documents concerning mercury in tuna fish, including documents circulated:
 - (a) Internally including with affiliates;
 - (b) With outside organizations;
 - (c) With Lobbyists; and
 - (d) With other companies.
15. All information concerning the safe keeping and/or storage of Tri-Union documents, including but not limited Tri-Union's data/document retention policy and policies concerning data destruction.
16. All documents referring to, relating to, or reflecting any lobbying activities, either directly or indirectly, concerning any legislative bill, regulation, policy or initiative of government concerning the presence of mercury in tuna fish.
17. All Tri-Union tuna fish labels in existence from January 01, 1990 until present.
18. All documents concerning the adverse effects of mercury in people.
19. All documents concerning customer complaints about Tri-Union tuna products.
20. All documents referenced, reviewed, or referred to in answering any of PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT.

Dated: May 17, 2010

By:


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