

Mallet and Company, Inc.

Bundy Baking/Synova Release Agent Trade Secret Litigation

Closing Argument

Carmin R. Zarlenga, Mayer Brown LLP, for Mallet and Company

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21 MR. ZARLENGA: Good afternoon, ladies and gentlemen.

22 On behalf of my firm, my client and myself, I thank you for

23 your time and attention. To me, it feels like a long week. I

24 don't know how it feels for you. We were really appreciate it.

25 It's necessary for the system to work and it's really

1 important.

2 I think if we can focus on the relevant issues and
3 ignore the noise in this case. It's pretty clear what
4 happened here. The Bundys and Bundy Baking wanted Mallet's
5 business. They coveted it. That's why they tried to buy it.
6 But they weren't willing to pay a fair price for it, so
7 someone else did.

8 Instead then, the Bundys tried to recreate Mallet.
9 That's what they did. And they went too far. They went way
10 too far. And that has brought us here right now to try to
11 right all the wrongs and there were way too many.

12 This all started at the very top, as I said at the
13 beginning of the case, in the boardroom at Bundy Baking.
14 You've heard Robert Bundy say his mission was to build a
15 world-class release agent business. Who better to target than
16 the best-in-class, and that was Mallet and Company.

17 To start with, they targeted Mallets employees and
18 former employees and lured them to reveal Mallet's trade
19 secrets and contractually protected confidential information
20 that is not just trade secrets. It goes beyond trade secrets.
21 Business information.

22 Dr. Zhou was hired for Mallet product formulas, which
23 it did receive, and also for assistance with the design of the
24 Synova plant. Ultimately, he was promised a well above
25 market, \$208,000 compensation package, which included

1 reimbursement for any legal fees so somebody was worried about
2 risk.

3 James Galicic was another former employee. This man
4 was nearly 90 years old. He suffered three strokes. Robert
5 Bundy drove to his house -- to his house to get assistance
6 with plant design. And he gave Mr. Galicic baking pans, Bundy
7 Baking pans, and he walked away with Mallet release agent
8 formulas when he left the home.

9 Ada Lacayo was hired -- actually she was working when
10 she was hired -- was hired in February of 2018 and had to work
11 at home for months because there was no facility. During that
12 time, Robert Bundy asked her for final formulas, release agent
13 formulas, and she obliged. And if you look at Exhibit P 230,
14 Plaintiff's 230, it's a short document, but basically she had
15 final formulas, which is interesting because she had no lab,
16 she had no support, and she did it in less than five months.
17 She started in February and by June all the formulas were done
18 and we all now know how that happened. You saw Mallet formula
19 release agent percentages in Lacayo's lab notebook, you saw
20 Dr. Decker's comparisons. It's certainly more likely than not
21 that Mallet's formulas were used to create Synova replicant
22 release agent products, it's a virtue certainty.

23 Chick Bowers. Bundy plied Mr. Bowers to help with
24 their new product rollout. He gave them a
25 customer-by-customer, product-by-product sales products

1 spreadsheet with two years worth of data worth at least \$1.6
2 million. The defendant's damage expert Mr. King, today
3 criticized this extensive data as useless, but never explained
4 why did Gil Bundy wanted to have it. And why did Robert Bundy
5 want it if it was useless information. That is a theme in
6 this case. It's a theme that you hear over and over again.
7 All this information is public. It's not really useful. But
8 they bent over backwards to get it and they did things that
9 went beyond what was legal.

10 The Bundys rewarded Mr. Bowers with a job they
11 created out of the goodness of their hearts, but the Bundys
12 received a lot more than that when they got that product list.
13 The Bundys also targeted Mallet's products, of course. Robert
14 Bundy tried to sidestep it on the witness stand, but you saw
15 in his deposition testimony he wanted to emulate Mallet's
16 Super P and he certainly did.

17 And lastly, the Bundys targeted Mallet's customers
18 using almost identical product names, differing only by one
19 letter. They marketed their products as equals to Mallet's
20 flagship products, using an equal sign to do it. Not just
21 broadly, but in direct customer communication. There's an
22 example, plaintiff's 265. Again, you see that equal sign
23 being used between the Supra 130 product and Super P products.
24 That was no accident.

25 A big reason for why some of this behavior occurred,

1 in my view, is there was pressure put on the people that
2 worked in or would go the Synova plants. It came from the
3 very top. There was an order you heard Mr. Hallmark testify
4 about that they'd you get to market ASAP coming from Gil
5 Bundy. When, in your job, the top dog, the highest person
6 there, puts pressure on people to get things done, people do
7 things they probably shouldn't do. And that's what happened
8 here.

9 Mr. Hicks tried to say yesterday, well, it's just
10 competition. It's just competition. Well, ladies and
11 gentlemen, cheating is not competing. It is not a level
12 playing field when your rival breaks the rules and you have to
13 play by the rules. That's not a level playing field.

14 To make matters worse here, at Mallet's expense,
15 Synova has taken Mallet's top products, the lifeblood of the
16 company, and is using them against Mallet in the markets even
17 today. Synova saved tons of research and development expense
18 by doing this, by just taking Mallet's products that have been
19 developed over 40 years. And they made a lot of money on the
20 back side too when they got to market a heck of a lot quicker
21 than they normally would have gotten had they not done that.

22 That's actually the definition of unfair composition
23 as Judge Bissoon has defined it in jury instructions and you
24 just heard it. You'll see that on the verdict form and it's
25 just not good.

1 I want to talk a minute about what you heard in the
2 opening statement, it's just vegetable oil. It's just
3 vegetable oil. If anything came out in this trial we know
4 that's not true. Just yesterday, the expert witness of the
5 defendants, not my expert witness, testified release agent
6 formulas actually require quite a bit of precision. And even
7 minor differences in release agents can be important and that
8 enhances the value that -- they are so sensitive that it
9 enhances the value because they work. Like Super P, Vegalube
10 Excel and many other Mallet products that work, they have
11 enhanced additional value.

12 So I want to talk about the burden of proof in the
13 case. Civil case. So the burden of proof is called the
14 preponderance of the evidence. And a typical analogy is a
15 scale, plaintiff on one side, defendant on the other side, and
16 if it tips ever so slightly, call it 51%, that is more
17 likely than not. And since we're in Pittsburgh, I'll use a
18 football field as an example. We don't have to score a
19 touchdown. We don't even have to score a field goal. We just
20 have to get the ball across the 50 yard line. That's the
21 burden of proof. That's another analogy. So that's what
22 we're talking about in this case,

23 Just think about it, if Mallet's products were so
24 worthless as they seemed to say, why did they go to so much
25 trouble to get these things, to get those product formulas?

1 Why did they do that? It's certainly more likely than not
2 that they were very valuable and the Bundys wanted them. And
3 they got them.

4 The defendants want to say -- you heard it, and I
5 want to make sure everybody understands this, that release
6 agents can be easily reverse engineered, anybody can reverse
7 engineer them. Well, there's two things about that. First of
8 all, where is the reverse engineering study? I mean, there's
9 all these documents, there's all these witnesses, where is the
10 study that was done where someone reverse engineered Super P
11 or Vegalube Excel or any other Mallet product? It does not
12 exist in this case because as the judge said, you have to
13 consider the evidence, not theory.

14 But the second thing is under the law as you just
15 heard the instructions, something like: I think I can reverse
16 engineer it, I think I can get it close does not count. You
17 have to actually reverse engineer; i.e., take a product,
18 analyze it and come up with a formula and then check that
19 against the real one. And that has not happened in this case.
20 So reverse engineering in this case has really no
21 applicability under the court's jury instructions because no
22 one did the analysis.

23 I want to talk a little bit about covenants. So we
24 have covenants in this case and they're important because
25 there's breach of contracts claims and there's what are called

1 tortious interference claims. Tortious interference is
2 someone has a contract with another person and a third party
3 comes in and interferes with the operations of that contract,
4 causes it not to be performed, causes it to be breached,
5 whatever the case may be. And that happened in this case.

6 For Mr. Bowers, the evidence is clear from his own
7 job application that he worked for Mallet for a continuous
8 time period from when he started in 1980 or 1981, I think it
9 was all the way to the time he left and went to Synova. So he
10 says that he left and came back and that it shouldn't apply.
11 But the document itself, there was a another continuation
12 letter while he was working with Mallet -- at that time owned
13 by another company, but still Mallet -- showing that his
14 employment was continuous. So that covenant was quite valid.

15 Ms. Lacayo's covenant, there's really no issue there.
16 She said it doesn't apply to her. She signed it when she was
17 at Mallet, Mallet did change hands, but the company stayed the
18 same. The company is still there today. You heard
19 Mr. Porzio, it's the same corporation.

20 So with those in place, any actions that caused
21 people to breach those covenants is tortious interference.
22 And that's what we have in this case on the part of Bundy
23 Baking Solutions and on the part of Synova because they
24 basically lured these folks with money to breach their
25 covenants by, first of all, just by taking the job offer. And

1 second of all, by, you know, getting information in violation
2 of their covenants. The language is very clear, formulas are
3 covered. All sorts of business information is covered.
4 Customer lists are covered. Those don't have to be trade
5 secrets. They don't have to be trade secrets in order to
6 violate the principles of breach of contract or the principles
7 of tortious interference.

8 If we just focussed on Ada Lacayo while she was
9 employed at Mallet, Bundy Baking Solutions hired her. She had
10 previously served in a prior job as Mallet's lab director.
11 After accepting a job at Synova, Lacayo sent massive amounts
12 of information to herself where she loaded it on her flash
13 drives and took it with her to her new job. Very suspicious
14 timing.

15 All the testimony you heard from our forensic expert,
16 Mr. Reisman, no one has come in here to say he make any
17 mistakes or he's wrong. There's no other forensic in this
18 case. Basically, as the lawyers talk about it, his testimony
19 is unrebutted. So all the testimony about massive amounts of
20 files being taken to Bundy Baking and put on the Synova
21 computers, there's no one else to say that didn't happen.

22 Ms. Lacayo says, well, she was somehow trying to help
23 Mallet. But think about it. How does uploading thousands of
24 documents to Synova computers help Mallet? That doesn't help
25 Mallet. It can only hurt Mallet. While at Synova, while she

1 was working at Synova, she's there, and an independent
2 consultant determined she was untrustworthy, so she violated
3 her covenant with Mallet, no question about it, when she took
4 the job, and certainly by disclosing reams upon reams of
5 confidential information.

6 Bundy Baking Solutions and Synova interfered with
7 that contract also by hiring Ms. Lacayo and by using that
8 Mallet confidential information in their release agent
9 formulas. Ada Lacayo even violated Synova's company policy
10 when she did the uploading and that's one of the reasons she
11 lost her job.

12 What was interesting, as a lawyer, you go on these
13 cases, you study things you see things you don't normally see.
14 Robert Bundy said that uploading that information to a Synova
15 computer was a firing offense, violated company policy,
16 serious. Well, what's interesting when you think about it,
17 Robert Bundy did the same thing. He took a product formula
18 sheet from Shane Zhou -- that should be on the screen, I hope,
19 and we took the numbers out so we don't have to close the
20 courtroom -- and uploaded it to the Synova Google Drive. But
21 he's still working there, probably doing pretty well.

22 Something to talk about is inevitable disclosure,
23 probably something you have never heard of. I never heard of
24 it until I was to law school. But you'll see inevitable
25 disclosure on the verdict form. This happens when a defendant

1 like Synova does things, takes things in, hires people, where
2 basically it becomes inevitable that prior employers, trade
3 secrets, confidential information will be disclosed.

4 And if there's any case I think that this doctrine
5 applies to, it's this case because so much information was
6 moved over. People in very relevant positions, high ranking
7 sales position, lab director, they have information that is
8 useful. And it's inevitable when you hired them that it's
9 going to bleed over to the other company and it did in spades.
10 So that doctrine, it's up to you, but it seems to apply,
11 especially when you consider the formulas find their way --
12 the formulas of Mallet find their way into the Synova
13 products.

14 And you saw a side-by-side comparison that the Synova
15 products copied Mallet release agent formulas. Ultimately,
16 the judge instructed you about conversion. Here again,
17 another word I didn't know until I got to law school. But
18 that's basically taking or using or possessing -- even
19 possessing -- property that doesn't belong to you. And
20 certainly all the defendants are guilty of that, of tort. So
21 it's a civil remedy. So that will be on the verdict form.
22 And I hope you can see it our way. But again, totally up to
23 you.

24 There's a lot of confusion, a lot of confusion was
25 created today about reformulation, alleged reformulation of

1 the Synova products. Well so the company lawyer and president
2 says that the products have to be reformulated, but the lab
3 director.

4 A. , Amanda Tallarico, testified that Synova used the
5 formulas from Ada Lacayo and those are the formulas now. And
6 Dr. Decker showed you the same thing, that the current
7 formulas are the same as Ada Lacayo's original formulas taken
8 from Mallet in this case. Synova has not shown you or entered
9 into evidence any other formulas for the products that are
10 so-called reformulation products.

11 So pay heed, ladies and gentlemen, to the court's
12 instruction of what is evidence and what is not evidence. By
13 the very nature a formula is written down and there's been no
14 new formulas created. It really seems like a tactic to avoid
15 responsibility. We'll talk more about that a little bit
16 later.

17 I want to talk about the damages. Just make sure how I'm
18 doing on time. We have a clock on everything. I think that
19 probably helped. On damages, if we can put up a chart from
20 Mr. McSorley. I'm at a disadvantage because I only have a
21 paper one. Based on the testimony of Mr. McSorley, our
22 damages expert, Mallet is requesting an award in the range of
23 \$21.1 to \$25.2 million and let me tell you why.

24 Synova's laboratory director -- not our witness, Synova's
25 laboratory director -- testified it took her four and a half

1 months to develop five products. So there was a lot of loose
2 talk that there's no support, no support for any of these
3 periods, well that's plenty of support it comes from an
4 adverse party, who admits it takes a long time to do this
5 especially if your R&D department is small as theirs is. So
6 totally supported in that range.

7 Another witness again on behalf of the defendants,
8 Dr. Rodriguez-Soana, he says it takes a least 18 months. So
9 that was just yesterday. So if you look at the range of the
10 period these numbers are supported by plenty of evidence, the
11 best evidence if you're a lawyer is the other side's
12 witnesses. And they both testified to these periods of time
13 and that's important.

14 So there support is for the longer head-start period and
15 it comes straight from Synova. For me, I thought it was
16 shameful the way the damages expert, Dr. King, pretended to
17 ignore that testimony as he at the same time had unrestrained
18 criticism for Mr. McSorley. That kind of selectivity, that's
19 something you can take into account and I would suggest you
20 should take into account.

21 There was a lot of instructions on credibility. There's
22 huge credibility issues in this case. I don't envy having to
23 decide those. It can be hard. But there was a lot of
24 inconsistencies on the defendant's side of this case. There
25 was a lot selective memories, forgetfulness, you name it. And

1 a lot of testimony where one just doesn't reconcile with the
2 other. And that should be taken into account. I submit it
3 should.

4 By taking shortcuts that they did, Synova bypassed
5 research and development costs for sure. They bypassed normal
6 product development stages for sure. They bypassed marketing
7 expenses you would have for a new because they just
8 piggybacked on Mallet's reputation. Just on the R&D, they
9 saved \$6.6 million. The defendant's expert King, he says
10 there's damages but they're so low, they're so low, it's just
11 hard to believe. That really, to me, is an attempt to avoid
12 responsibility for what happened here.

13 And the attacks on Mr. Tinge, our corporate
14 representative, he didn't compute damages. He just answered
15 the questions he was asked and he tried to do the best he
16 could. He even said it was the expert's job to do that and it
17 was.

18 Mr. King's opinions also are completely uninformed. He
19 claims a company can enter the market release agent market
20 with less than a full suite of products. Well, guess what?
21 You can do that for sure, you can do that. But take Synova as
22 an example. They're losing money right and left because they
23 didn't come in with a full suite of products, they're still
24 losing money, I don't know why.

25 THE COURT: One minute.

1 MR. ZARLENGA: Excuse me, Your Honor?

2 THE COURT: One minute.

3 MR. ZARLENGA: I want to talk about punitive damages.
4 Before that, I want to say, we don't want a lot of damages
5 against the individuals, we really don't. We would like some,
6 but nominal, small, because we would like to prevail against
7 them for the record, but really the damages focus is on Synova
8 and Bundy Baking Solutions.

9 They are particularly appropriate here to make an
10 example of wrongdoers and discourage such behavior in the
11 future. I want to talk about the coverup you heard about.
12 You saw the facts in black and white, Plaintiffs' Exhibit 3,
13 Robert Bundy, president of the company, posing as John Smith
14 and using a dummy e-mail to hide his tracks. And likewise,
15 Mr. Zhou posing as Song Tang at the e-mail address
16 Holsum@gmail.com.

17 THE COURT: Time.

18 MR. ZARLENGA: Thank you, Your Honor.
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Mallet and Company, Inc.

Bundy Baking/Synova Release Agent Trade Secret Litigation

Closing Argument Rebuttal

Carmin R. Zarlenga, Mayer Brown LLP, for Mallet and Company

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21 THE COURT: Plaintiffs' rebuttal.

22 MR. ZARLENGA: Sorry. I did make a mistake that,

23 when I was talking to you about the time period, it's

24 4.5 years -- Amanda Tallarico -- to make five release agents.

25 So I'm sorry if I confused you, but it's a very long time

1 period to make that number of products, and I wanted to make
2 sure we got that right.

3 Heard a lot of things just now that aren't evidence
4 in the case. The judge has told you, you can't consider that.
5 I don't know where that \$70 million came from. I don't know
6 where all these other issues came from, but they're not
7 evidence in the case. They're not to be considered.

8 On the trade secret list, we were very clear that the
9 comparison was made to Super P, NH, which some people refer to
10 as Super P. There's other Super Ps. So nobody's pulling a
11 fast one.

12 If you could put up PX-10. Just leave it up.

13 You just heard: Hey, these are different. Our
14 products are not the same as their products.

15 This is -- this is PX-10. This is what they're
16 telling their customers: They're equal. The products are
17 equal.

18 So I don't know. I don't know who's lying to whom.
19 They're either lying to you or they're lying to customers, one
20 or the other.

21 As the judge told you, the fact that someone brings
22 something home with them does not disclose the trade secret,
23 as long as they're subject to an agreement, which every
24 employee you saw from Mallet was subject to an agreement.

25 That's right in the instructions list. I suggest you

1 look through those, although they're long.

2 In terms of PHOs, we don't sell products that have
3 PHOs in them. Those are recipes of products that were stolen
4 and can be used, because it's fairly well known how to switch
5 out a PHO by now. Back then it wasn't, but it's well known.
6 So those still would be trade secrets, and they still can be
7 misused.

8 In terms of the reverse engineering, where's the
9 study? Where's the study? There's no evidence of it
10 whatsoever. So it should not be considered. And it didn't
11 even really make sense.

12 I do want to go back to the punitive damages because
13 I didn't get to finish. Okay. So why is that important?
14 Because the fake dummy e-mails, it shows an intent to conceal.
15 To conceal things, to cover one's tracks. People do not try
16 to conceal legitimate behavior. They don't. They try to
17 conceal something, it's because there's a reason to.

18 Robert Bundy, the president of Synova, knew very well
19 what he was doing was wrong. He absolutely knew it. Senior
20 executives should not be behaving this way. It's not a good
21 example.

22 And then coming in here and trying to wave the family
23 flag while they're doing this kind of behavior, disseminating
24 ill-begotten information over a computer network to a dozen
25 employees or more. That is wrong. That shouldn't have

1 happened. So somebody needs to put a halt to this, and I
2 suggest it be you.

3 There's a total and complete abject refusal to accept
4 responsibility for the things that happened, for the things
5 you saw. And we're completely innocent. We did nothing
6 wrong, and it's all my client's fault -- well, nothing could
7 be further from the truth.

8 We brought this case, and I wasn't even involved in
9 the beginning of it. We brought this case because it was
10 important. I don't know what they were talking about, but I'm
11 from Youngstown, by the way, and I'm a Steelers fan. So I
12 don't know how people can say that no one's connected here. I
13 saw my first NFL game right here in Pittsburgh. Quite a while
14 ago, but I saw it.

15 Let me just make sure. The records as to Bob Wilhelm
16 and what Bob Wilhelm said about commodity products, he retired
17 in 2011. That's 14 years ago. He was a great guy.
18 Apparently, he was the Godfather of product release formulas.

19 But at this point in time, you can't just take what
20 you knew back then and apply to the market now. It's a much
21 more complicated market. Much more complicated buyers looking
22 to save on costs.

23 And that's where Mallet delivers very good products.
24 They're very successful, much in contrast to Synova, which is
25 supposedly run by people who know a thing or two about baking,

1 but they don't know how to run a release agent company, that
2 is for sure.

3 They blew through the budget, you heard that. \$3
4 million budget. They spent \$20 million. It's not a budget,
5 as Mr. Hallmark said. You just increased it. That's not a
6 budget. That's an overspend. And that's what happened. No
7 one's explained to you how, if they know so much about release
8 agents, how they missed the budget by a factor of six.

9 So in terms of punitive damages, you're allowed to
10 award up to two times. So if you awarded \$15 million in
11 compensatory damages, punitive damages go to \$30 million in
12 addition to that. And I would suggest that about an equal
13 amount is the right number for this case. It's not worst
14 behavior, but it's pretty bad.

15 So punitive damages should be awarded. This kind of
16 behavior should not be allowed. It should not happen. We
17 should not be up here talking about it.

18 Thank you very much for your time, ladies and
19 gentlemen.

20 THE COURT: Okay, ladies and gentlemen. In a few
21 minutes, you'll begin deliberations on this case. During
22 deliberations you must continue to observe all the
23 restrictions I've instructed you on throughout trial. That
24 is, you must not discuss this days with anyone including other
25 people involved in the trial, members of your family,