

Mallinckrodt Can't Get Out Of Manhattan Project Waste Suit

By [Bonnie Eslinger](#) · [Listen to article](#)

Law360 (May 31, 2023, 10:08 PM EDT) -- A Delaware bankruptcy judge on Wednesday denied drugmaker Mallinckrodt's request to be released from a lawsuit over nuclear waste it produced 80 years ago as a contractor on the Manhattan Project, saying the suit does not violate a provision in the company's Chapter 11 plan.

U.S. Bankruptcy Judge John T. Dorsey said in his order that Mallinckrodt had not shown that the discharge injunction in the plan would be violated. Accordingly, the plaintiffs in the lawsuit should not be prevented from pursuing their claims, the bankruptcy judge said. Mallinckrodt filed for bankruptcy in October 2020 and Judge Dorsey approved the reorganization plan in February 2022.

In 1942, the company — then known as Mallinckrodt Chemical Works — was contracted by the U.S. government to refine uranium for the Manhattan Project, which produced the world's first nuclear weapons. According to court papers, residue from the refining — which continued through the 1950s — was stored at a site near the St. Louis, Missouri, international airport and passed through several owners before ending in the possession of Cotter Corp. in the late 1960s.

In 2018, a group of about 500 St. Louis property owners, referred to as the Banks plaintiffs, launched litigation in Missouri state court against Cotter and others allegedly responsible for permitting radioactive material from the Manhattan Project to contaminate the local environment. The initial complaint discussed Mallinckrodt's involvement, but did not assert any claims directly against the company, Judge Dorsey noted in his Wednesday ruling. Later, Cotter joined Mallinckrodt to the action by way of third-party complaint.

Then, in January, the Banks plaintiffs amended their complaint to add Mallinckrodt as a defendant and, for the first time, assert claims against the company directly.

Mallinckrodt responded by filing a motion with the bankruptcy court seeking to enforce the provision in its Chapter 11 plan that prevents creditors from taking legal action to collect any alleged debts. Since the claims against Mallinckrodt were filed before the company declared bankruptcy, they are subject to the discharge provision unless a specific exception applies, the judge notes.

The Banks plaintiffs argued that a separate agreement Mallinckrodt inked with Cotter and other defendants is such an exception, because it carves out from discharge "any liabilities of debtor Mallinckrodt LLC" related to the company's processing of radioactive material that "have been asserted in writing before the [bankruptcy] petition date."

The St. Louis property owners also pointed to the allegations contained in their operative complaint, including its claim that during the time at issue, the property was managed and operated by Mallinckrodt.

Mallinckrodt countered that at the time of its agreement with Cotter and the other defendants, the plaintiffs had not filed any claim against Mallinckrodt.

In his Wednesday ruling, Judge Dorsey said evidence submitted on the issue — email exchanges between counsel for Mallinckrodt and the Banks plaintiffs — belied Mallinckrodt's assertion.

"The emails demonstrate that [the] debtors were informed that the counterparty in the negotiations expected that the claims of both Cotter and the plaintiffs would be preserved," the judge said.

That supports the conclusion that the parties intended for the phrase "any liabilities" to include any prepetition written assertion by plaintiffs that Mallinckrodt is responsible for injuries arising out of its processing of uranium.

The judge agreed with the St. Louis property owners.

Although the operative complaint did not include claims by the plaintiffs against Mallinckrodt directly, "it would certainly be reasonable to read it as asserting Mallinckrodt's liability for the injuries described," Judge Dorsey said.

In their suit, the Banks plaintiffs claim the uranium waste contaminated local groundwater. Cotter named Mallinckrodt in the suit in June 2020, and the drugmaker moved the case to federal court, arguing that it was covered by the federal Price-Anderson Act, a statute that protects nuclear companies that work for the government.

On appeal to the Eighth Circuit in 2021, the Banks plaintiffs argued that they had not asserted any claims against Mallinckrodt, but the circuit found Price-Anderson covered any claims involving nuclear materials produced for the government and that the case should remain in federal court.

During an [April hearing](#) over Mallinckrodt's motion for an order from the bankruptcy court enforcing the discharge injunction issued in connection with its plan of reorganization, the company's counsel argued the agreement with Cotter did not cover the Banks plaintiffs' claims.

The lawyer also argued that, in an attempt to avoid federal jurisdiction under Price-Anderson, the Banks plaintiffs had never asserted liability against Mallinckrodt in their suits and had expressly denied a liability claim before the Eighth Circuit.

Counsel for Mallinckrodt did not immediately respond to a request for comment on the judge's decision. A lawyer for the Banks plaintiffs told Law360 they are reviewing Judge Dorsey's opinion.

Mallinckrodt is represented by Mark D. Collins, Robert J. Stearn, Jr., Michael J. Merchant, Amanda R. Steele and Brendan J. Schlauch of [Richards Layton & Finger PA](#) and George A. Davis, Christopher Harris, George Klidonas, Andrew Sorkin, Anupama Yerramalli, Hugh K. Murtagh, Jeffrey E. Bjork and Jason B. Gott of [Latham & Watkins LLP](#).

The Banks litigation plaintiffs are represented by Neil B. Glassman and Steven D. Adler of Bayard PA and Steven L. Thomas and Robert L. Bandy of Kay Castro & Chaney PLLC.

The case is In re: [Mallinckrodt PLC](#) et al., case number [1:20-bk-12522](#), in the [U.S. Bankruptcy Court for the District of Delaware](#).

–Additional reporting by Rick Archer. Editing by Kelly Duncan.