



State of Michigan,

Circuit Court for the County of Huron

ROGER A. HALEY and VALERIE J. HALEY, husband and wife;
and, DONALD L. HALEY and FLORENCE S. HALEY, husband and wife

SUMMONS

vs.

File No. 77-00 253 NP

MICHIGAN SILO COMPANY, A Michigan Corporation; C & B
SILO COMPANY, A Michigan Corporation, ^{DEPENDANTS}
MONSANTO COMPANY, A Corporation; and, CONCRETE SILO
COMPANY, INC., A Corporation, Jointly and Severally

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

To the above named defendant Monsanto Company.....:

You are hereby notified that a civil action has been commenced against you, and that if you desire to defend the same, you are required to answer or take such other action as may be permitted by law with regard to the complaint herewith served upon you, within *20 days after service of this summons and complaint upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

EDWARD A. SWACKHAMER
County Clerk.

Helena M. Semanski, Dep.

(SEAL OF THE COURT)

Date: May 18, 1977.....

WOODWORTH & WOODWORTH

James N. Woodworth
Plaintiff's Attorney JAMES N. WOODWORTH

Attorney for Plaintiffs

125 N. Heisterman St.

Bad Axe, MI 48413.....

Business Address

Phone: (517) 269-9961

*If service is made outside the State of Michigan or by registered mail 30 days is allowed for answer or such other action as may be permitted by law.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF HURON

ROGER A. HALEY and VALERIE J. HALEY,
husband and wife; and, DONALD L.
HALEY and FLORENCE S. HALEY, husband
and wife,

Plaintiffs

-vs-

File # 77 00 2593 NP

MICHIGAN SILO COMPANY, A Michigan
Corporation; C & B SILO COMPANY, A
Michigan Corporation; MONSANTO COM-
PANY, A Corporation; and, CONCRETE
SILO COMPANY, INC., A Corporation,
Jointly and Severally

Defendants

-----/
Woodworth & Woodworth
James N. Woodworth P#26346
Attorney for Plaintiffs
-----/

C O M P L A I N T

Now comes the above named plaintiffs by WOODWORTH & WOODWORTH, their
attorneys, and Complains against the defendants as follows:

C O U N T I

1. That plaintiffs are residents of Grant Township, Huron County,
Michigan.
2. That defendant Michigan Silo Company is a Michigan Corporation,
incorporated March 17, 1966, with its principal office in Charlotte,
Michigan, hereinafter referred to as Michigan Silo.
3. That defendant C & B Silo Company is a Michigan Corporation,
with its principal office in Charlotte, Michigan, hereinafter referred
to as C & B Silo.
4. That defendant Monsanto Company is a corporation incorporated
under the laws of the State of Delaware, with a registered agent and
office in Michigan at, c/o The Corporation Company, 615 Griswold Street,
Detroit, Michigan, hereinafter referred to as Monsanto.
5. That defendant Concrete Silo Company, Inc., is a corporation
with its registered office in Bloomfield, Indiana, hereinafter referred
to as Concrete Silo; and a corporation known as Concrete Silo Company, Inc.

WOODWORTH &
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125 N. HEIDEMAN ST.
DAD AVE. MICHIGAN 48413

of Bloomfield, Indiana, consolidated with a Michigan corporation known as Michigan Silo Company by an Agreement of Consolidation dated November 17, 1965, by which the constituent corporations were consolidated under the name of Concrete Silo Company, Inc., with its registered office in Bloomfield, Indiana, and by which the new corporation expressly assumed all debts, liabilities and duties of the said constituent corporations.

6. That the plaintiffs presently own a dairy farm located in Sections 9 and 10, Grant Township, Huron County, Michigan, and the plaintiffs Roger A. & Valerie J. Haley are presently operating said farm and reside thereon.

7. That plaintiffs, Donald L. and Florence S. Haley's interest in said farm premises is financial only and have never taken an active part in the management and operation of the dairy business.

8. That plaintiffs purchased the real property comprising the farm premises from Clayton J. Gemmel and Ardis A. Gemmel, husband and wife, in 1972.

9. That plaintiffs purchased certain personal property on said farm premises including, but not limited to four silos, unloaders, feeders, augers, cows, heifers and calves from Clayton J. Gemmel and Ardis A. Gemmel in 1972.

10. That in August 1965, plaintiff's predecessor in title, Clayton Gemmel, contracted with Michigan Silo to build a 20' X 60', which silo was completed and paid for in 1965; that in 1966 Clayton Gemmel contracted with Michigan Silo to build a 20' X 60' silo, which silo was completed and paid for in 1966; that in 1966 Clayton Gemmel contracted with Michigan Silo to build a 16' X 57 1/2' silo, which silo was completed and paid for in 1966; that in 1967 Clayton Gemmel contracted with C & B Silo to build a 20' X 70' silo which silo was completed and paid for in 1967.

11. That the 16' X 57 1/2' silo built in 1966, mentioned in paragraph #10 is and has been leased by a written lease by plaintiff Roger A. Haley from one Donald Gemmel, since 1972 and is located in Section 9 of Grant Township, Huron County, Michigan.

12. That defendant Monsanto supplied to Michigan Silo, through its factor Concrete Silo, at Bloomfield, Ind. and Massilon, Ohio, an industrial chlorinated hydrocarbon under the trade name of AROCLOR; that plaintiffs are informed and believe that defendant Monsanto specifically provided AROCLOR 1254 to Michigan Silo and that Michigan Silo used said AROCLOR 1254 in the preparation of its silo sealant known as CUMAR; that said CUMAR was used as a silo sealant on the above silos by Michigan Silo and by C & B Silo.

13. That all of the above-mentioned silos were used for young cattle and in particular, heifers being raised for replacement in the main dairy herd.

14. That Clayton J. Gemel and Ardis A. Gemmel have assigned all of their interest in this cause of action to plaintiffs.

15. That after purchasing the property involved, plaintiffs made use of the silo storage facilities to feed their cattle and heifers a heavy concentration of corn silage along with hay and oats, all from said silos.

16. That defendants, Michigan Silo and C & B Silo expressly warranted to plaintiffs' predecessors in title that the silo material and construction would be of good quality and workmanship and represented that the silos in question would be good facilities for storage of silage and would aid in producing the top quality silage for feeding dairy cattle and said silos were sole for the express purpose of storage and preparation of feed for dairy cattle.

17. That the defendants, Michigan Silo and C & B Silo impliedly warranted that the silos in question were fit for the particular purpose for which they were sold and constructed and that the said defendants' products were merchantable.

18. That the CUMAR coating used in said silos was, in fact, heavily laden with an industrial chlorinated hydrocarbon commonly known as Polychlorinated Biphenyls or "PCB", that the coating has saturated the silo walls and joints thereof and is inseparable from the silo in general and the use of the silos resulted in contamination of all of the silage and feed contained therein with PCB.

19. That after the purchase in 1972, plaintiff Roger A. Haley immediately attempted to progressively improve his herd and over the years improve its level of production, and in 1973 or 1974 placed his heifers on a concentration of corn silage from the said silos, particularly in an effort to improve his herd.

20. That no matter how hard plaintiff, Roger A. Haley, tried and no matter what efforts he put toward herd improvement, the best he could do was to stay at a relatively level rate of production; in addition, instead of any increase in production, he experienced conception difficulties with his dairy cows and heifers and production remained level or sometimes showed a decline rather than steadily improving.

21. That in September, 1974, plaintiffs were notified by a State Dairy Inspector of the Michigan Department of Agriculture that the milk being produced on their farm from their cows contained a level of PCB which was believed to be coming from feed being contaminated in their silos and in the silo being rented by them; that said Inspector ultimately caused the chemical testing of the silo walls on two silos and the conclusion was that PCB was present in high concentration on said silo walls and was contaminating the feed therein.

22. That in 1976, plaintiffs were advised to cease using the silos and make other arrangements for placing of their crops to be taken off that summer and fall in other types of feed containers; that plaintiffs did so at considerable expense and extra effort on their part; that they did construct additional silos for the storage of their crops for feed to the dairy herd. That because said actions were required, plaintiffs incurred substantial financial burdens and various losses resulted, all from having to use new silos and to change their operation of dairy management and abandon their contaminated silos as well as that being rented, and in addition certain valuable crops remained in said silos which were abandoned as not being proper feed for their dairy herd.

23. That each of the defendants were aware that AROCLOR 1254 and CUMAR products supplied by defendants could and would cause the PCB contamination and knowing this, defendants negligently and willfully con-

tinued to produce and use same as a silo sealant and negligently and willfully failed to warn plaintiffs of the potential PCB damage and contamination of their animals, buildings, equipment, land and persons.

24. That plaintiffs sustained damages due to defendant's breach of contracts and breach of warranties including but not limited to:

- a. Loss of production, conception difficulties with the dairy herd, capital outlays to abandon feed and storage facilities, health damages and potential health damages to plaintiffs.
- b. Loss of interest at banking institutions on money which they should have received but did not receive due to defendant's actions.
- c. Payment of interest on loans to banking institutions which could have been paid in full if not for plaintiffs severe loss of profit in their dairy business.
- d. Costs of construction of additional substitute silos.
- e. Costs to replace contaminated feeding equipment.
- f. Costs to replace contaminated feed bunker.
- g. Loss of value of abandoned feed and silage.
- h. Loss of profit on forced sale of real property which was necessary so that plaintiffs could financially survive.
- i. Loss of value of contaminated farmland (100 acres) as a result of contaminated manure being spread on said farmland.
- j. Loss of milk production over five years.
- k. Loss of value of cows which died over five years.
- l. Loss of calves which died over five years.
- m. Costs of feed purchased which was used to control level of PCB in milk.

WHEREFORE, plaintiffs request Judgment in their favor and against defendants, jointly and severally, in the sum of \$750,000.00 together with interest and costs of suit.

C O U N T I I

Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs #1 through #24 in Count I and further state:

25. That the defendant Monsanto is one of the world's largest producers of industrial chemicals and the sole manufacturer in the United States of Polychlorinated Biphenyls (PCBs) and sold PCBs under the trade name of AROCLOR, and specifically sold to defendant Michigan Silo AROCLOR 1254 containing 54% chlorine.

26. That during the period defendant Monsanto sold AROCLOR 1254 to Michigan Silo, or its various factories in Michigan, Indiana, Ohio or Tennessee, or elsewhere, said defendant knew or reasonable should have known that said product was being used to manufacture silo coating sealant.

27. That defendant Monsanto expressly warranted its products through to buyers and ultimately said expressed warranty runs to plaintiffs herein; and, in addition defendant Monsanto impliedly warranted that its products, in particular AROCLOR 1254, are fit for the particular purpose for which they are purchased and that said products are merchantable.

28. That at the time Monsanto sold AROCLOR 1254 to Michigan Silo or affiliates, it knew or should have known that PCBs were environmental contaminants and that said substances were toxic to both humans and animals.

29. That defendant Monsanto breached its said express and implied warranties and is liable to plaintiffs for all damages sustained.

30. That as a result of defendant Monsanto's breach of expressed and implied warranties, plaintiffs sustained the damages as enumerated in paragraph #24 above and elsewhere herein.

WHEREFORE, plaintiffs request Judgment in their favor and against the defendants, jointly and severally, in the sum of \$750,000.00 together with interest and costs of suit.

C O U N T I I I

Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs #1 through #24 in Count I and paragraphs #25 through #30 in Count II, and further state:

31. That defendant Monsanto as manufacturer, producer and seller of AROCLOR 1254 which was ultimately supplied to plaintiffs in the silo

coating known as CUMAR, owed plaintiffs the duty of care in regard to the manufacture, production and distribution and sale of said AROCLOR 1254.

32. Defendant Monsanto, because of its knowledge and expertise, owed plaintiffs a duty of care to assure that AROCLOR 1254 would not be used so as to contaminate feed and supplements fed to plaintiffs' dairy cattle and further owed plaintiffs utmost due care and caution in assuring proper management and supervisory control over said AROCLOR 1254 so that said product would not be used in such a manner as to become a contaminate dangerous to plaintiffs dairy cattle or to plaintiffs themselves or the environment in which they live.

33. That defendant Monsanto breached said duty of due care in that it did not exercise proper care, management and control in the selection of labeling, licensing and manufacture of said AROCLOR 1254 and permitted said product to be purchased and used in such a manner as to become a contaminant on plaintiff's premises causing adverse affects to plaintiffs' dairy herd and to plaintiffs themselves; that said failure to exercise due care consisted of both negligent actions and omissions on the part of defendant Monsanto.

34. That said defendant's failure to exercise proper care under all circumstances constituted negligence and caused great damage to plaintiffs' dairy operations and caused contamination of plaintiffs' farm lands and buildings, and caused other damages as more particularly stated in paragraph #24 in Count I herein incorporated by reference.

WHEREFORE, plaintiffs request Judgment in their favor and against the defendant Monsanto in the sum of \$750,000.00 together with interest and costs of suit.

C O U N T I V

Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs #1 through #24 in Count I, paragraphs #25 through #30 in Count II, and paragraph #31 through #34 of Count III, and further state:

35. That defendant Monsanto manufactured and produced AROCLOR 1254 under the trade name of AROCLOR which was to be used in the preparation of a silo sealant known as CUMAR. And that as manufacturer,

defendant Monsanto was under a duty of reasonable care to design AROCLOR so that it would be reasonable for its intended use.

36. That said AROCLOR was marketed and sold by defendant Monsanto to defendants Michigan Silo, C & B Silo and Concrete Silo, to be used in the preparation of a silo sealant known as CUMAR, and that defendants Michigan Silo and C & B Silo used the CUMAR containing AROCLOR 1254 to coat and seal the insides of plaintiffs silos.

37. That plaintiffs' predecessors in title relied upon defendants' representations that their products, in particular AROCLOR 1254 were fit for the particular purpose for which they were intended and that their products were safe and merchantable.

38. That said AROCLOR was defective for its intended purpose and caused unreasonable risks to its ultimate users and consumers, plaintiffs herein; and that said defendants owed plaintiffs a duty of reasonable care in the manufacture, production, sale and application of the AROCLOR 1254 to avoid unreasonable risk of injury.

39. That said AROCLOR 1254 was defective and unreasonable dangerous for its intended purpose and was the proximate cause of the damages incurred by plaintiffs as enumerated in paragraph #24 above and elsewhere herein.

WHEREFORE, plaintiffs request Judgment in their favor and against the defendants, jointly and severally, in the sum of \$750,000.00 together with interest and costs of suit.

C O U N T V

Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs #1 through #24 in Count I, paragraphs #25 through #30 in Count II, paragraphs #31 through #34 in Count III, and paragraphs #35 through #39 in Count IV, and further state:

40. That defendants Michigan Silo, C & B Silo, Concrete Silo and Monsanto knew or had reason to know that numerous farm families, including plaintiffs, consumed meat, milk and other products produced on their farms and that as a direct result of contamination of the silos owned or used by plaintiffs, which silos were used to store feed

for the animals on plaintiffs' farm, the meat, milk and other products from the farm were likely to be contaminated and consumed directly by plaintiffs and result in health problems to the plaintiffs and their families.

41. That plaintiffs herein did consume meat, milk, vegetables from their garden fertilized with contaminated manure, and other products produced on plaintiffs' farm and as a result did consume large quantities of PBC which was contained in the feed fed to plaintiffs' animals from said contaminated silos, which contamination was placed on said farm by defendants Michigan Silo and C & B Silo, which contamination was manufactured and provided to defendants Michigan Silo and C & B Silo by defendant Monsanto and their agent, Concrete Silo.

42. That a direct result of the breach of expressed and implied warranties, and the negligence of said defendants, the plaintiffs suffered serious health problems and are likely to suffer severe and deleterious health problems for the remainder of their lives and their lives are likely to be shortened; that their effectiveness in performing their work and ultimately maintaining their livelihood has seriously diminished.

43. That as a direct and proximate result of the breach of express and implied warranties and negligence on the part of the defendants, the plaintiffs herein have suffered loss of reputation because of problems in keeping creditors satisfied, mental anguish over their ability to rectify the situation not of their own making and the callous attitude of defendants towards their problems, and because of health problems and mental anguish they are unable to perform duties previously performed and engaged in activities previously participated in.

WHEREFORE, plaintiffs pray that a Judgment be entered in their favor against Michigan Silo Company, C & B Silo Company, Concrete Silo Company, Inc., and Monsanto Company, jointly and severally in an amount not to exceed \$1,000,000.00 which will compensate plaintiffs for their losses which losses will continue and increase during the pendency of this action, and in addition that said Judgment require said defendants to provide plaintiffs with medical, dental and optical expenses during

the rest of their lives.

DATED: May 18, 1977

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BY 

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