STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

GARY HOWELL,

Plaintiff,

vs.

MONSANTO COMPANY, a foreign corporation,

Defendant.

NO. 76 601 868 NP

JUDGE JOHN D. O'HAIR
P 18432

RICHARD D. FOX (P 26438)
Attorney for Plaintiff

RICHARD F. SUHRHEINRICH (P 21130)
Attorney for Defendant

NOTICE OF HEARING

TO: RICHARD F. SUHRHEINRICH
Attorney for Defendant
2030 Buhl Building
Detroit, Michigan 48226

PLEASE TAKE NOTICE that the attached Motion to Amend Complaint will be brought on for hearing before the Honorable John D. O'Hair at 2:00 p.m. July 27, 1979, or as soon thereafter as counsel may be heard.

SOMMERS, SCHWARTZ, SILVER
& SCHWARTZ, P.C.

By: Richard D. Fox
RICHARD D. FOX
Attorney for Plaintiff
26555 Evergreen Road
1800 Travelers Tower
Southfield, Michigan 48076
355-0300

DATED: July 10, 1979

HARTOLDMON0095404

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

GARY HOWELL,

Plaintiff,

vs.

MONSANTO COMPANY, a foreign corporation,

Defendant.

NO. 76 601 868 NP

JUDGE JOHN D. O'HAIR
P 18432

RICHARD D. FOX (P 26438)
Attorney for Plaintiff

RICHARD F. SUHRHEINRICH (P 21130)
Attorney for Defendant

MOTION TO AMEND COMPLAINT

NOW COMES Gary Howell, Plaintiff herein, by and through his attorneys SOMMERS, SCHWARTZ, SILVER & SCHWARTZ, P.C., and moves this Honorable Court for the entry of an Order granting Plaintiff leave to file an Amended Complaint in compliance with the attached proposed Amended Complaint.

WHEREFORE, Plaintiff prays that this Honorable Court enter an Order granting leave to file an Amended Complaint.

This motion is based upon the files and records herein, the attached Affidavit, and the attached Memorandum Brief in Support of said Motion.

SOMMERS, SCHWARTZ, SILVER & SCHWARTZ, P.C.

By: Richard D. Fox
RICHARD D. FOX
Attorney for Plaintiff
26555 Evergreen Road
1800 Travelers Tower
Southfield, Michigan 48076
355-0300

DATED: July 10, 1979

HARTOLDMON0095405

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

GARY HOWELL,

Plaintiff,

vs.

MONSANTO COMPANY, a foreign corporation,

Defendant.
_____/

NO. 76 601 868 NP

JUDGE JOHN D. O'HAIR
P 18432

RICHARD D. FOX (P 26438)
Attorney for Plaintiff

RICHARD F. SUHRHEINRICH (P 21130)
Attorney for Defendant

AMENDED COMPLAINT AND JURY DEMAND

NOW COMES Gary Howell, Plaintiff herein, by and through his attorneys, SOMMERS, SCHWARTZ, SILVER & SCHWARTZ, P.C., and complaining against the above-named Defendant says:

COUNT I.

1. Plaintiff realleges and repeats each and every allegation contained in Paragraphs 1 through 12, inclusive, of Plaintiff's original Complaint with the same force and effect as though more fully set forth herein.

WHEREFORE, Plaintiff Gary Howell claims judgment against the Defendant Monsanto Company, a foreign corporation, for whatever amount Plaintiff is found to be entitled as determined by the trier of fact, together with interest, costs and attorney fees.

DEMAND FOR TRIAL BY JURY IS HEREBY MADE.

HARTOLDMON0095406

COUNT II.

EXEMPLARY DAMAGES

1. Plaintiff Gary Howell repeats and realleges each and every allegation contained in Paragraphs 1 through 12, inclusive, of Plaintiff's original Complaint and Count I of this Amended Complaint with the same force and effect as though more fully set forth herein.

2. That the actions of the Defendant Monsanto Company, in failing to fully and adequately warn the ultimate users of AROCLOR 4465 of its toxic effects and its failure to provide proper instructions for its use, constitute extraordinarily outrageous conduct amounting to willful, wanton and/or reckless disregard for human life.

WHEREFORE, Plaintiff Gary Howell claims judgment against the Defendant Monsanto Company, a foreign corporation, for whatever amount Plaintiff is found to be entitled as determined by the trier of fact for exemplary damages, together with interest, costs and attorney fees so wrongfully sustained.

DEMAND FOR TRIAL BY JURY IS HEREBY MADE.

SOMMERS, SCHWARTZ, SILVER
& SCHWARTZ, P.C.

By: Richard D. Fox
RICHARD D. FOX
Attorney for Plaintiff
26555 Evergreen Road
1800 Travelers Tower
Southfield, Michigan 48076
355-0300

DATED: July 10, 1979

HARTOLDMON0095407

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

GARY HOWELL,

Plaintiff,

vs.

MONSANTO COMPANY, a foreign corporation,

Defendant.

NO. 76 601 868 NP

JOHN D. O'HAIR
P 18432

RICHARD D. FOX (P 26438)
Attorney for Plaintiff

RICHARD F. SUHRHEINRICH (P 21130)
Attorney for Defendant

AFFIDAVIT

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

RICHARD D. FOX, being first duly sworn, deposes and says that he is a member of the law firm of SOMMERS, SCHWARTZ, SILVER & SCHWARTZ, P.C., attorneys for the Plaintiffs herein, and as such has personal knowledge of the within cause.

That he has read the within Motion by him subscribed and that the matters contained therein are true, except as to those matters stated to be on information and belief, and as to those matters, he believes them to be true.

Further Deponent sayeth not.

Richard D. Fox
RICHARD D. FOX

Subscribed and sworn to before me
this 10th day of July, 1979.

CAROLE M. TERLECKI
Notary Public, Wayne County, Michigan
My Commission Expires November 13, 1982

HARTOLDMON0095408

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

GARY HOWELL,

Plaintiff,

vs.

MONSANTO COMPANY,
a foreign corporation,

Defendant.

NO. 76 601 868 NP

JUDGE JOHN D.O'HAIR
P 18432

RICHARD D. FOX (P 26438)
Attorney for Plaintiff

RICHARD F. SUHRHEINRICH (P 21130)
Attorney for Defendant

MEMORANDUM BRIEF IN SUPPORT OF
MOTION TO AMEND COMPLAINT

Plaintiffs bring this Motion to Amend Complaint under Michigan General Court Rule 118.1, which provides, among other things, as follows: That fifteen days after a responsive pleading has been filed, a party may amend his pleadings only by leave of the Court or by written consent of the adverse party. The rule goes on to state that "leave shall be freely given when justice so requires". The same Court rule goes on to state (MCL 118.4) that the amendment relates back to the day of the original pleading whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. It is Plaintiffs' contention that the Amended Complaint attached to the Motion sets forth explanatory facts that arose out of the conduct, transaction, or occurrence set forth in the original Complaint.

The trial Court's statutory authority lies in MCLA 600.2301 pertaining to the amendment of process or pleadings before judgment wherein it states as follows:

> "The Court in which any action or proceeding is pending has power to amend any process, pleading or proceeding in such action or proceeding, either in form or substance, for the furtherance of justice, on such terms as are just, at any time before judgment rendered therein. The Court at every stage of the action or proceeding shall disregard any error or defect in the proceedings which do not affect the substantial rights of the parties."

The case of LaBar v. Cooper, 376 Mich. 401, deals with the question of Plaintiff amendments to the Complaint and, in particular, the doctrine of relating back the amendments to the original occurrence. In reversing the trial Court's decision not to allow Plaintiff the right to amend his pleadings, the Supreme Court stated, at page 409:

> "It should always be borne in mind that GCR 118 provides that leave to amend shall be freely given when justice so requires, and that RJA §2301 (CLS 1961, 600.2301, Statutes Annotated 1962, revised §27A.2301) provides for amendments either in form or in substance for the furtherance of justice."

LaBar's philosophy was further expanded in the recent decision of Doan v. Chesapeake and Ohio Railway Company, 18 Mich. App. 271, at page 280, where the Court stated:

> "This Court holds that sub-rule 118.1 imposes a limitation on the discretion of the trial Court in denying leave to amend necessitating a finding that justice would not be served by the amendment." (emphasis added)

The Court goes on to cite again, LaBar, supra, with approval. Additional authority: Vhay v. Gies, 236 Mich. 545; Perin v. Peuler, 369 Mich. 242; Fyke & Sons v. Gunter Co., 390 Mich. 649; Spartan Asphalt v. Mobile Home Park, 71 Mich. App. 177; and Goldsmith v. Moskowitz, 74 Mich. App. 506.

HARTOLDMON0095410

RELIEF SOUGHT

For the reasons stated hereinabove, Plaintiffs request this Honorable Court to grant them leave to file the Amended Complaint, a copy of which is attached hereto.

SOMMERS, SCHWARTZ, SILVER,
SCHWARTZ & TYLER, P.C.

BY: _____
RICHARD D. FOX
Attorneys for Plaintiffs
1800 Travelers Tower
26555 Evergreen Road
Southfield, Michigan, 48076
355-0300

DATED: July 10, 1979