

PCB-legal

Section B

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Monsanto Co. Files Denial In PCB Case

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The Monsanto Co., a leading producer of industrial chemicals, has claimed it bears no responsibility or liability for damages resulting from the contamination of fish meal in a pasteurizing process at Wilmington.

Monsanto, replying to a \$68-million suit filed against it and several other firms by Holly Farms Poultry Industries Inc. of Wilkes County, alleged acts of negligence by the designers, fabricators and operators of the pasteurizing system "were the efficient and proximate causes of any damages that may have been suffered."

Holly Farms, which seeks \$56 million from Monsanto alone, filed the suit after destroying thousands of chickens and eggs it said had been contaminated by a chemical, polychlorinated biphenyl (PCB), which had leaked into fish meal that was sold to it for use as chicken feed.

MONSANTO supplied the chemical as a heat exchange fluid in the pasteurizing system, and Holly Farms alleged the chemical manufacturer violated

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its own safety code by continuing to supply fluid when it should have discovered that it was shipping fluid to replace that lost by leakage.

Monsanto replied that it "had no knowledge of the ownership or operation of the pasteurizing machine at Wilmington, North Carolina, but it has since been informed and believes that this machine was operated by South Pacific Protein Association Inc. and under its sole and exclusive control and direction."

"It would have been negligence for those in charge of operating and maintaining the pasteurizing machine to operate it while the chemical heat exchange fluid was leaking from its container into the fish meal, and it would have been dangerous for such persons operating the pasteurizing machine to continue to operate the same knowing or having reason to know that the heat exchange fluid was leaking from its container into the fish meal," Monsanto said.

Asking dismissal of the suit, Monsanto cited as one defense Holly Farms' failure to name the William J. Moran Co. and Western Precipitation Division of Joy Manufacturing Co. parties in the action. Monsanto said these firms "are needed for just adjudication."

HOLLY FARMS had mentioned the firms in its suit, identifying them in connection with the purchase and installation of the pasteurizing device.

Other parties in the suit, which was transferred in November from Wilkes Superior Court to U.S. Middle District Court at Greensboro at the request of Monsanto, were identified by Holly Farms as follows:

East Coast Terminals Inc., owner of facilities at the Port of Wilmington; South Pacific Protein Association, which leased a portion of a port warehouse where the device was located; and the Wilbur-Ellis Co. and International Proteins Corp., which Holly Farms said sold it the contaminated fish meal.

Monsanto asked that if any judgment is ultimately entered against it in the case that it be allowed to recover the amount from the other firms, and declared it "pleads the unforeseen and unforeseeable intervening, insulating negligence of the designers, fabricators and operators in bar of any recovery by the plaintiff against this defendant."

THE CHEMICAL company also said the fluid in question, bearing the trade name Thermisol FR-1, was shipped during 1971 in containers bearing labels "clearly setting forth precautions to be observed in the use and handling of the product."

A copy of the label bore this statement: "This product contains polychlorinated biphenyls which some studies have shown may be an environmental contaminant. Extreme care should be taken to prevent any entry into the environment through spills, leakage, use, disposal, vaporization or otherwise. Contact your Monsanto representative regarding reclamation or disposal of used fluid."

Monsanto also alleged the leak was known to the operators of the device, that they sought repairs by "persons incompetent and unskilled as to repair of such equipment." The device operators, Monsanto added, continued to use the device after repair attempts were unsuccessful.

The other firms named in the suit have not yet filed answers to Holly Farms' claims.

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