STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

IN THE SUPERIOR COURT OF BOONE COUNTY
CAUSE NO. S78-323

RAYMOND C. BOTTEMA)
)
Plaintiff)
)
VS)
)
BLOOMFIELD SILO COMPANY, INC.,)
MONSANTO COMPANY, and)
MONSANTO ENVIRO CHEM SYSTEMS, INC.)
)
Defendants)

FILED
AUG 3 1 1978
Thelma Lutzjen
CLERK BOONE SUPERIOR COURT

COMPLAINT FOR DAMAGES

Comes now the Plaintiff, Raymond C. Bottema, by counsel, and for his Complaint against the Defendants alleges and says that:

COUNT I.
IMPLIED WARRANTY

Plaintiff, for his first claim against Defendant, Bloomfield Silo Company, Inc. (hereinafter referred to as "Bloomfield") alleges that:

1. Plaintiff is, and at all relevant times has been, a dairy farmer in the County of Boone, State of Indiana.

2. Bloomfield is a corporation that builds, erects, repairs, maintains, seals and re-coats concrete silos in the State of Indiana. Bloomfield is a merchant, as defined by Indiana Code §26-1-2-104(1), with respect to the compounds and materials it sells and uses to coat or seal interior surfaces of concrete silos.

3. On or about May 14, 1961, Bloomfield, pursuant to a contract with Plaintiff, constructed a concrete silo upon Plaintiff's dairy farm in Boone County. Subsequently, Bloomfield repaired, altered and repainted said silo in May and June of 1967.

4. On or about June 14, 1974, Bloomfield, pursuant to a contract with Plaintiff, performed work upon said silo which included the application of a sealant or coating material or compound upon the interior surfaces thereof, for which Plaintiff was charged. Plaintiff relied upon Bloomfield's expertise and knowledge to select a material or compound suitable for the particular purpose which was known by Bloomfield.

5. The compound or material used by Bloomfield was latently defective in that it contained an excessive quantity of polychlorinated biphenyls (a/k/a PCBs), an environmental contaminant which is regulated

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and restricted by state and federal law.

6. As a matter of law, Bloomfield impliedly warranted that the compound or material it used to coat or seal the silo was fit for that purpose.

7. The compound or material used by Bloomfield was not fit for the particular purpose in that it contaminated the grain stored in said silo and the grain contaminated the dairy herd and the milk produced therefrom.

8. Plaintiff first learned that his milk was contaminated during the summer of 1976. Subsequently he learned the source of contamination was the sealant or coating applied to the interior surface of his silo and that the contaminant was identified as PCBs.

9. As a result of the contamination Plaintiff was forced to destroy feed, grain and milk and to have his silo sandblasted and recoated with a non-contaminated material and has incurred damages in the amount of Nine Thousand Nine Hundred Ninety Dollars ($9,990.00).

WHEREFORE, Plaintiff prays for judgment against Bloomfield in the amount of Nine Thousand Nine Hundred Ninety Dollars ($9,990.00) together with his costs and all other relief proper in the premises.

James P. Quinn

James P. Quinn

COUNT II.
NEGLIGENCE

Plaintiff, for his second claim against Defendant, Bloomfield Silo Company, Inc. (hereinafter referred to as "Bloomfield") alleges that:

1. Plaintiff incorporated herein by reference hereto Rhetorical Paragraphs 1 through 9 of Count I.

2. Bloomfield knew or should have known that the compound or material it used to coat or re-seal the interior surfaces of Plaintiff's silo was unfit and unsafe, but failed to exercise due care in the selection thereof.

3. As a direct and proximate result of Bloomfield's negligence, Plaintiff's silo, feed grain, cattle and milk were contaminated with PCBs and Plaintiff has incurred damages therefrom in the amount of Nine Thousand Nine Hundred and Ninety Dollars ($9,990.00).

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WHEREFORE, Plaintiff prays for judgment against Bloomfield in the amount of Nine Thousand Nine Hundred Ninety Dollars ($9,990.00), together with his costs and all other relief proper in the premises.

James P. Quinn

James P. Quinn

COUNT III.
NEGLIGENCE

Plaintiff, for his first claim against Defendants, Monsanto Company and Monsanto Enviro Chem Systems, Inc. (hereinafter collectively referred to as "Monsanto"), alleges and says that:

1. Monsanto is the sole and exclusive manufacturer in the United States of compounds containing polychlorinated biphenyls (PCBs).

2. PCBs are environmental toxic contaminants that are presently subject to federal and state regulations.

3. Monsanto manufactured a compound or material containing high levels of PCBs, a latent defect, which was sold and distributed as a sealant or coating for interior surfaces of concrete silos.

4. The product manufactured, sold and distributed by Monsanto was used by Bloomfield Silo Company, Inc. to coat or re-seal the interior surface of Plaintiff's silo.

5. Monsanto failed to exercise reasonable care in the manufacture and testing of said product and failed to give adequate warning of the potential and actual hazards associated with and attributable to their product.

6. As a direct and proximate result of said negligence Plaintiff's silo, feed grain, dairy cattle and milk were contaminated by PCBs, Plaintiff was unable to market his milk, and Plaintiff was forced to destroy feed grain and have his silo sandblasted and re-sealed with a compound or material to reduce or eliminate the level of PCB contamination.

7. Plaintiff first learned that his milk was contaminated with PCBs by a letter dated August 24, 1976 from the Department of Health, Education and Welfare, which letter was received several days thereafter. Plaintiff subsequently investigated the cause of said contamination and learned that the source of contamination was the coating or sealant used on the interior surfaces of his silo. Further investigation later revealed that said coating or sealant was manufactured by Monsanto.

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WHEREFORE, Plaintiff prays judgment against Monsanto Company and Monsanto Enviro Chem Systems, Inc., jointly and severally, in the amount of Nine Thousand Nine Hundred and Ninety Dollars ($9,990.00), together with costs and such other relief as may be proper in the premises.

James P. Quinn

James P. Quinn

COUNT IV.
IMPLIED WARRANTY IN TORT

Plaintiff, for his second claim against Defendants, Monsanto Company and Monsanto Enviro Chem Systems, Inc. (hereinafter collectively referred to as "Monsanto"), alleges and says:

1. Plaintiff incorporates herein by reference hereto Rhetorical Paragraphs 1 through 7 of Count III.

2. Monsanto, as the manufacturer, seller and distributor of compounds and materials for the coating or sealing of interior surfaces of concrete silos, impliedly warranted that same were fit and safe for the intended purpose thereof.

3. The compound or material manufactured, sold and distributed by Monsanto was not safe or fit for the intended and expected purpose for which it was used.

4. As a direct and proximate result thereof, Plaintiff's property has been damaged and Plaintiff has lost revenue due to contamination of his dairy cattle and milk in the amount of Nine Thousand Nine Hundred and Ninety Dollars ($9,990.00).

WHEREFORE, Plaintiff prays for judgment against Monsanto Company and Monsanto Enviro Chem Systems, Inc., jointly and severally, in the amount of Nine Thousand Nine Hundred and Ninety Dollars ($9,990.00), together with costs and such other relief as may be proper in the premises.

James P. Quinn

James P. Quinn

James P. Quinn
BUCK, BERRY, LANDAU, BREUNIG & QUINN
One Indiana Square, Suite 2235
Indianapolis, Indiana 46204
639-2683

HARTOLDMON0095865

C T SYSTEM

SERVICE OF PROCESS TRANSMITTAL FORM

C T Corporation System
The Corporation Trust Company
C T Law Technology, Inc.

SEP 7 1978

TO: C T CORPORATION SYSTEM
(C T Office)
St. Louis, Missouri
(City) (State)

FROM: C T Corporation System
(Originating Agent)

Per Sharon Kurichyk

~~Indianapolis, Indiana~~
(City) (State)

DATE: 9/1/78 VIA: First Class Mail

TO: Mr. J.R. G. Ortiz, Atty.
Legal Department
~~XXXXXXX~~ Monsanto Company
800 No. Lindbergh Blvd.
St. Louis, Missouri 63166
(Authorized Recipient)

VIA: [XX] Certified First Class Mail
[ ] Messenger

RE: PROCESS SERVED IN Indiana
(Jurisdiction)

FOR Monsanto Company (Name of Company) Delaware (Domestic State)

Enclosed are copies of legal process served upon the statutory agent of the above company as follows:

1. Title of Action: Raymond C. Bottema vs. Bloomfield Silo Company Inc., Monsanto Company and Monsanto Enviro Chem Systems, Inc.

2. Document(s) Served: Summons and Complaint for Damages.

3. Court: Boone County Superior Court, Lebanon, Indiana Cause No. S78-323

4. Nature of Action: Plaintiff's property had to be destroyed as a result of contamination due to Defendant's negligence. Damages $9,990.00.

5. On Whom Process was Served: From Thelma Burgin, Boone Superior Court, Lebanon, In to Monsanto ~~Enviro Chem~~ Company c/o C T Corporation, Indianapolis, In

6. Date and Hour of Service: September 1, 1978 at 10:30 a.m.

7. Appearance or Answer Due: Within 23 days.

8. Plaintiff's Attorney(s): James P. Quinn, One Indiana Square, Suite 2235, Indianapolis, Indiana 46204

9. Remarks:

RECEIVED AND FORWARDED ON 9/5/78 (Date)

KINDLY ACKNOWLEDGE RECEIPT BY SIGNING THE CARBON COPY AND RETURNING IT TO

BY: C T CORPORATION SYSTEM

Per B.L. HARMON

314 NO. BROADWAY
~~ST. LOUIS, MISSOURI 63102~~
(Address)

NJ291—12-76 50M Sets

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SUMMONS

In the BOONE
Superior Court of ~~Marion~~
County, Room No. _____

RAYMOND C. BOTTEMA

Plaintiff

—vs—

CAUSE No. S78-323

BLOOMFIELD SILO COMPANY, INC.
~~MONSANTO COMPANY and~~
MONSANTO ENVIRO CHEM SYSTEMS, INC.

Defendant

TO DEFENDANT: (Name) MONSANTO COMPANY (Serve Resident Agent) C.T. Corp. Systems

(Address) 1011 Merchants Bank
Indianapolis, Indiana 46204

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

DATED: AUG. 31 1978

Thelma Breunig
CLERK BOONE SUPERIOR COURT
(Seal)
Clerk, Superior Court of ~~Marion~~ County
Boone

(The following manner of service of summons is hereby designated.)

X ~~Registered~~ or certified mail.

_____ Service on individual — (Personal or copy) at above address.

_____ Service at place of employment, to-wit: _____

_____ Service on agent. (Specify) _____

_____ Other service. (Specify) _____

James P. Quinn
Attorney for Plaintiff
BUCK, BERRY, LANDAU, BREUNIG & QUINN
One Indiana Square, Suite 2235
Indianapolis, Indiana 46204
Address

639-2683
Telephone

HARTOLDMON0095867

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the _____day of _____, 19_____, I mailed a copy of this Summons and a copy of the complaint to the defendant, _____, by _____ mail, requesting a return receipt, at the address furnished by the plaintiff.

_____
Clerk of the Superior Court of Marion County

Dated: _____, 19_____ By:_____
Deputy

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint mailed to defendant _____was accepted by the defendant on the _____ day of _____, 19_____.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint was returned not accepted on the _____ day of _____, 19_____.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint mailed to defendant_____was accepted by _____ on behalf of said defendant on the _____ day of _____, 19_____.

_____
Clerk of the Superior Court of Marion County

By:_____
Deputy

Cause No._____ Room No._____

Plaintiff

vs.

Defendant

SUMMONS

SUPERIOR COURT

SHERIFF'S COSTS

Attorney for Plaintiff

Address

Telephone

SHERIFF'S RETURN ON SERVICE OF SUMMONS

I hereby certify that I have served this summons on the _____ day of _____ 19____:

(1) By delivering a copy of the Summons and a copy of the complaint to the defendant; _____

_____

(2) By leaving a copy of the Summons and a copy of the complaint at _____ _____ which is the dwelling place or usual place of abode of _____ _____;

and by mailing a copy of said Summons to said defendant at the above address.

(3) Other Service or Remarks: _____

_____

_____ _____
Sheriff's Costs Sheriff

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SUMMONS

In the BOONE
Superior Court of ~~Marion~~
County, Room No. _____

RAYMOND C. BOTTEMA

Plaintiff

—vs—

BLOOMFIELD SILO COMPANY, INC.
~~MONSANTO COMPANY and~~
MONSANTO ENVIRO CHEM SYSTEMS, INC.

Defendant

CAUSE No. S78-323

TO DEFENDANT: (Name) MONSANTO COMPANY (Serve Resident Agent) C.T. Corp. Systems

(Address) 1011 Merchants Bank
Indianapolis, Indiana 46204

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

DATED: AUG. 21 1978

Thelma Burgin
CLERK BOONE SUPERIOR COURT (Seal)
Clerk, Superior Court of ~~Marion~~ Boone County

(The following manner of service of summons is hereby designated.)

x ~~Registered or~~ certified mail.

_____ Service on individual — (Personal or copy) at above address.

_____ Service at place of employment, to-wit: _____

_____ Service on agent. (Specify) _____

_____ Other service, (Specify) _____

James P. Quinn
Attorney for Plaintiff
BUCK, BERRY, LANDAU, BREUNIG & QUINN
One Indiana Square, Suite 2235
Indianapolis, Indiana 46204
Address

639-2683
Telephone

HARTOLDMON0095869

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the _____day of _____, 19_____, I mailed a copy of this Summons and a copy of the complaint to the defendant, _____, by _____ mail, requesting a return receipt, at the address furnished by the plaintiff.

_____
Clerk of the Superior Court of Marion County

Dated: _____, 19_____. By:_____
Deputy

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint mailed to defendant _____was accepted by the defendant on the _____ day of _____, 19_____.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint was returned not accepted on the _____ day of _____, 19_____.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the complaint mailed to defendant_____was accepted by _____ on behalf of said defendant on the _____ day of _____, 19_____.

_____
Clerk of the Superior Court of Marion County

By:_____
Deputy

Cause No._____ Room No._____

Plaintiff

vs.

Defendant

SUMMONS

SUPERIOR COURT

SHERIFF'S COSTS

Attorney for Plaintiff

Address

Telephone

SHERIFF'S RETURN ON SERVICE OF SUMMONS

I hereby certify that I have served this summons on the _____ day of _____ 19____:

(1) By delivering a copy of the Summons and a copy of the complaint to the defendant, _____

_____

(2) By leaving a copy of the Summons and a copy of the complaint at _____

_____ which is the dwelling place or usual place of abode of _____

_____;

and by mailing a copy of said Summons to said defendant at the above address.

(3) Other Service or Remarks: _____

_____

_____ _____

Sheriff's Costs Sheriff

HARTOLDMON0095870