

RAS

xeerox copy  
DEC 10 1971  
RH  
JFS  
AJP  
ABC

HENDERSON, HENDERSON & SHUFORD  
ATTORNEYS AT LAW  
SUITE 400 LAW BUILDING  
CHARLOTTE, N. C. 28202

D. E. HENDERSON (1878-1968)  
DAVID H. HENDERSON  
CHARLES J. HENDERSON  
WILLIAM A. SHUFORD

December 8, 1971

OFFICE TELEPHONE  
DIAL: 393-4163

REFER TO OUR FILE NO. \_\_\_\_\_

Monsanto  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63166

ATTN: Mr. P. S. Park  
Legal Department

RE: Austin -vs- Monsanto

Gentlemen:

This letter will constitute a somewhat detailed report with respect to the above claim pursuant to my telephone conversation today with your Mr. Park.

Our client, in June of 1962, purchased from Concrete Silo Company through Charles Boswell, salesman of Monteagle Tennessee, two sixteen (16) by fifty (50) waxed stave silos. Concrete Silo Company has, according to information furnished us, disposed of its assets and, to the best of our knowledge, is now defunct. It is our information that the interior finish of these silos was coated with a Monsanto product identified as containing as one of its ingredients Arochlor 1254. Apparently, this was used in the bonding agent between the block walls and the interior wax finish.

In early 1965, for a period of about three (3) months, Mr. Austin's milk sales were prohibited as a result of testings made by local authorities attributed at that time to an undisclosed DDT source. During the shut-down period, Mr. Austin lost in excess of 77,000 pounds of milk having a value slightly above \$5,000.00. Pet Dairy Division in a memorandum to its regional

DSW 379516

STLCOPCB4100288

managers and field men, among other publications, indicates that Polychlorinated Biphenyls have been confused with DDT in milk from dairy cattle. With the less sophisticated testing available at that time it is our impression that there was simply a misidentification since subsequent testing by the Food and Drug Administration positively names Arochlor 1254 as present in the Austin silos.

In your letter to Congressman Ryan of New York in August of 1970, it was reported to have indicated that you would no longer sell P. C. B. to customers for use in general plasticizer operations where disposal of the end products could not be controlled. The persistence of these compounds has been the subject of a number of articles on the subject, the reading of which leads us to relate the symptoms at Mr. Austin's silos to the Monsanto source.

In the summer of 1971, Mr. Sam Rich of the Mecklenburg County Environmental Health Division first advised Mr. Austin of the presence of P. C. B. in his milk following a sample taken on June 10, 1971, by a Mr. McEwen and a Dr. Conder of the Food and Drug Administration. Since that time there has been an ever present threat that Austin's milk sales would again be terminated. He sought aid and assistance from Monsanto in letters directed to your Mr. Papageorge and from all of the public agencies involved, including the North Carolina Department of Agriculture, Department of Health, Food and Drug Administration and Public Health Services. No solution was presented acceptable to any of these authorities and, consequently, Mr. Austin, in order to protect his milk marketing, was forced to construct a new substitute silo at a cost excess of \$8,000.00 for a comparable capacity. This silo was required to be located disadvantageously because of the existence of the silos which have been condemned. Additionally, Mr. Austin was required to extend exceptional labor in an attempt to utilize only that portion of the stored silage not contaminated from the walls of the silo until the supply in storage was exhausted. He has computed this amount at about \$1,000.00. Our client is then (giving no consideration to his personal time, trouble and worry in the matter) out of pocket to the extent of moneys between \$14,000 and \$15,000.

DSW 379517

December 8, 1971

I am enclosing herewith a photostatic copy of a report made for us by the Food and Drug Administration on the analytical samples taken on June 10, 1971. I trust this will be helpful to you in making a determination as to what position Monsanto will take in connection with this claim.

I feel that we have waited a reasonable amount of time in an effort to obtain satisfaction for Mr. Austin and cannot in good conscious and in representing him delay the action much longer. I would, therefore, appreciate having a prompt reply from you in as much as Liberty Mutual, your reported insurance carrier, has indicated that it is not on coverage.

Very truly yours,



David H. Henderson

DHH/jas

Enclosure

DSW 379518

STLCOPCB4100290