

12/15/83

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 No. 77-00-2593-NP

MICHIGAN SILO COMPANY, a Michigan
Corporation; C & B SILO COMPANY, a
Michigan Corporation; and MONSANTO
COMPANY, a Corporation, jointly and
severally,

Defendants.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage fully prepaid thereon on the 15 day of December 1983. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

Carol A. Ragan

PLAINTIFFS MOTION FOR LEAVE TO AMEND COMPLAINT

NOW COME the above named Plaintiffs, by and through their attorneys, MCGRAW & BORCHARD, P.C., and JAMES N. WOODWORTH, and for their Motion for Leave to Amend Complaint under GCR 1963, 118, set forth as follows:

1. That this is a complex and very technical cause of action involving many different theories which have only been developed through the discovery process and through numerous experts.
2. That lengthy discovery by virtue of Interrogatories, depositions, Requests to Admit, and research has continued by the respective parties hereto up to the present time, and is still ongoing.
3. That on August 18, 1983, a pre-trial conference was held in this matter before this Honorable Court, at which time the Court was advised of further discovery, further witnesses and continued preparation for trial.
4. That further, a pre-trial conference is scheduled to be held in this matter on January 12, 1984.
5. That the Plaintiffs pray that they be allowed to amend their Complaint to include the allegations of nuisance and exemplary damages as against the Defendants in said cause.
6. That no surprise or prejudice by virtue of the amendment at this time will occur, in that during the course of discovery it has been learned by all counsel and all parties that the contaminants found on the Haley farm are

continuing, that their half-life is long in nature, that they do not degrade, and that they will be continually on the Haley farm. It has also been discovered and is well known by all parties that Defendant Monsanto Company knew about the effects of PCBs before the Haleys purchased their farm and knew about the contamination of farm silos long before the Haleys purchased their farm with the present Michigan Silos on it.

7. That Michigan Silo Company, C & B Silo Company, Concrete Silo Company and Monsanto Company took no action to notify silo companies or individual farms who had contaminated silos that they were being exposed to a hazardous material.

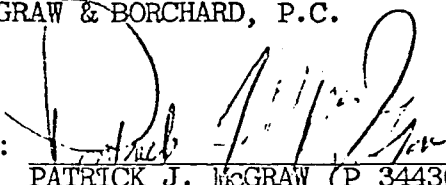
8. That the loss of the farm and its value has been discussed with defense counsel and they are well aware of that claim. It has recently come to the attention of the Plaintiffs' counsel that the value of this farm is further decreased by the media coverage, and the resale value has declined significantly as represented by the articles submitted to the Court and counsel in support of Defendant Monsanto's Motion in Limine.

9. That attached hereto and made a part hereof is a copy of Plaintiffs' Amended Complaint setting forth the theories and relief requested. Also amended is the ad damnum clause of the Complaint in which the appropriate relief is now requested.

WHEREFORE, Plaintiffs pray that the Court allow their Amended Complaint to be filed in said cause in accordance with GCR 118.1, et seq, as having arisen out of the conduct, transactions or occurrences as set forth in the original Complaint and Answers and relate back to that original Complaint.

Dated: December 15, 1983

McGRAW & BORCHARD, P.C.

BY: 

PATRICK J. MCGRAW (P 34430)
Attorneys for Plaintiffs

Business Address:
1100 Court Street
Saginaw, Michigan 48602
Telephone: (517) 799-7995

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage fully prepaid thereon on the 15 day of September, 1988. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

Carol A. [Signature]

PLAINTIFFS' AMENDED COMPLAINT

NOW COME the above named Plaintiffs, by and through their attorneys, McGRAW & BORCHARD, P.C., and JAMES N. WOODWORTH, and complain against the Defendants as follows:

44. Plaintiffs hereby reallege and incorporate herein by reference each and every allegation contained in Counts I-V of their original Complaint and paragraphs 1-43 as if fully set forth herein.

WHEREFORE, Plaintiffs request judgment in their favor and against the Defendants, jointly and severally, in an amount in excess of Ten Thousand (\$10,000.00) Dollars, plus costs, interest and attorney fees.

COUNT VI

45. Plaintiffs hereby reallege and incorporate herein by reference each and every allegation contained in Counts I-V of their original Complaint and paragraphs 1-43 as if fully set forth herein.

46. That the premises of the Plaintiffs contain two Michigan Silos with very high levels of a hazardous industrial chemical known as Aroclor 1254, a polychlorinated biphenyl.

47. That a present risk exists that this hazardous material may migrate to the Plaintiffs' farmland and other areas used by the Plaintiffs, producing a danger to their health, safety and welfare.

48. That the said hazardous industrial chemical is the product or property of the Defendants, Monsanto Company, C & B Silo Company, Concrete Silo Company and Michigan Silo Company.

49. That the conditions of the said land and presence of the Defendants' product, property and poisons there constitute a continuing nuisance to the Plaintiffs.

50. That the conditions and activities on the said land were and are ultrahazardous and abnormally dangerous, non-natural things for which Defendants are strictly liable.

51. That the generator Defendants, Monsanto Company, along with Michigan Silo, C & B Silo and Concrete Silo, knew or should have known that their products, property and/or poisons would be involved in the creation or maintenance of a nuisance, as such products were directly sold to silo companies.

52. That the existence of the said nuisance and activities has destroyed the market value of Plaintiffs' farm.

53. That as a proximate result of the said nuisance, Plaintiffs have sustained damages, including, but not limited to, the following:

- (a) The loss of gross income due to:
 - (1) lowered milk production;
 - (2) the decrease in quality of the milk that was produced;
 - (3) loss of milk production for animals that have died.
- (b) The loss of all cattle in the herd.
- (c) Reproduction losses of cattle, including animals not bred due to contamination, failure of contaminated animals to breed, extra breeding costs and related losses.
- (d) Additional costs of feeding and caring for contaminated cattle, including veterinary, medical and laboratory fees.
- (e) The total loss of Plaintiffs' dairy farm due to the permanent and irreversible contamination.
- (f) The decrease in the fair market value of the Plaintiffs' farmland due to the spreading of manure and waste containing the contaminant produced by the Defendants.
- (g) The loss of interest income on lost profits, as well as additional interest and finance charges paid by Plaintiffs for the reason that Plaintiffs could not meet or keep current their financial obligations and had to incur additional obligations in order to maintain their farm and dairy operation.
- (h) The loss of business goodwill and reputation as producers of quality milk and dairy cattle.

- (i) The loss of business goodwill, reputation and credit caused by Plaintiffs' inability to pay their financial obligations due to lack of income.
- (j) The loss of a chance to sell their farm at a good profit as a continuing dairy farm due to negative publicity which has diminished the value and has made the farm almost impossible to sell due to the media-generated publicity dealing with Defendants' product. This contamination has to be revealed to prospective purchasers in order to avoid fraud and deceit on the part of the Plaintiffs, which loss was occasioned by the product produced, used and sold by the Defendants in this action.
- (k) The physical and mental problems arising out of the anxiety as to the future disease or conditions which have been documented by exposure to the Defendants' product.
- (l) The emotional and mental suffering and anxiety caused by Plaintiffs' loss of livelihood and normal way of life. These losses and damages are continuing and will increase during the pendency of this action.

WHEREFORE, Plaintiffs request judgment in their favor and against the Defendants, jointly and severally, in an amount in excess of Ten Thousand (\$10,000.00) Dollars, plus costs, interest and attorney fees.

COUNT VII
EXEMPLARY AND/OR PUNITIVE DAMAGES

54. Plaintiffs hereby reallege and incorporate by reference each and every allegation in Counts I-V of their original Complaint and paragraphs 1-43 as if fully set forth herein.

55. That the losses suffered by the Plaintiffs have occurred through the carelessness and negligence of the Defendants amounting to a wrong so reckless and wanton as to be without palliation or excuse.

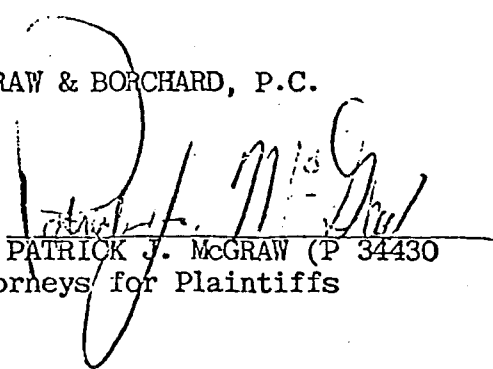
56. That the testing and examination procedures of the Defendant manufacturer were so inadequate as to manifest a flagrant indifference to the possibility that the ultimate consumers and others were being exposed to outrageous risk of harm.

57. That the Defendant manufacturer's conduct was especially outrageous in view of their roles as scientific experts concerning the Aroclors and PCBs, and especially in view of their promotion of the contaminant chemical and especially in view of their developing methods to detect this material and placing into the stream of commerce without sufficient testing, and in view of their promotion of this chemical, which promotion was so successful that they sold billions of pounds of this material throughout the world.

WHEREFORE, Plaintiffs seek exemplary damages from the Defendants in an amount that is reasonable and just and in accordance with all of the proofs to be presented herein.

Dated: December 15, 1983

McGRAW & BORCHARD, P.C.

BY: 

PATRICK J. McGRAW (P 34430)

Attorneys for Plaintiffs

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Saginaw, Michigan 48602
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