UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

SEP 10 1982
SOUTHERN DISTRICT OF INDIANA
JAMES R. TYRE
ACTING CLERK

RALPH J. BIEHLE and ALBERTA J. BIEHLE

Plaintiffs

vs.

MONSANTO COMPANY, BLOOMFIELD SILO COMPANY, INC., CONCRETE SILO COMPANY, JOHN DOE and JOHN DOE, INC.

Defendants

Civil Action No. NA 82-275-C

COMPLAINT FOR DAMAGES

Plaintiffs

1. Named as Plaintiffs in this action is Ralph J. Biehle and Alberta J. Biehle, husband and wife, both residents of Jennings County, State of Indiana.

Defendants

2. Named as Defendants in this action is Monsanto Company (Monsanto) a Missouri Corporation; Bloomfield Silo Company, Inc. (Bloomfield) an Indiana Corporation; Concrete Silo Company (Concrete) the State of Incorporation is unknown to the Plaintiff; and John Doe and John Doe, Inc., who may have manufactured, sold and placed in the stream of commerce certain silos which were sold to Plaintiffs, however, the exact names of said individuals or corporations are not presently known to the Plaintiff. The John Doe Defendants are named in their stead, and the correct names will be substituted by amendment hereafter.

Jurisdiction

3. Jurisdiction of this action is based upon violation of Federal statute in Count I and diversity of citizenship in Counts II, III, IV and V.

4. Count I is based upon violation of 21 U.S.C. §§301, et seq. (Federal Food, Drug & Cosmetic Act), and said Count I seeks damages for violation of Federal statute and is not based upon negligence or strict liability in tort or other state tort law.

JAMES B. RAILING
ATTORNEY AT LAW
9 WEST WARDELL ST.
UPG, INDIANA 47170
(812) 752-2344

HARTOLDMON0095849

5. Counts II, III, IV and V are brought against Monsanto and the Does who are citizens of states other than Indiana, and such Counts are based upon diversity of citizenship. The amount in controversy exceeds the jurisdictional amount, exclusive of interest and Court costs, and jurisdiction of this Court as to such Counts is invoked by reason of 28 U.S.C. § 1332.

COUNT I

Violation of 21 U.S.C. §§ 301, et seq.

6. The Plaintiffs are the owners of two (2) silos which were used for the purpose of storing silage as feed for milk cows.

7. The said silos were lined with material manufactured, sold and placed in the stream of commerce by the Defendant, Monsanto Company. The other Defendants named herein were the builders, contractors and sellers of said silos, and the material used as lining for said silos.

8. The said silos and the lining of said silos owned by Plaintiffs contain toxic substances and polychlorinated biphenyls (PCB) in toxic and dangerous quantities.

9. The Defendants, either individually or in concert, violated 21 U.S.C. §§301, et seq. (Federal Food, Drug & Cosmetic Act) in that they designed, manufactured, made, sold, delivered, or placed into the stream of commerce, polychlorinated biphenyls (PCB) in toxic and dangerous quantities.

10. The violation of the above mentioned Federal statute proximately caused injury to the Plaintiffs.

11. The Plaintiffs' injuries consisted of:

a. Damage and contamination of silos

b. Damage to dairy cattle and milk

c. Loss of use of both dairy cattle and silos

d. Loss of farm business and income

e. Mental distress

f. Personal injuries to Ralph J. Biehle

g. Medical bills

h. Pain and suffering

i. Permanent injury and mental anguish

AMES E. RAILING
ATTORNEY AT LAW
WEST WARDELL ST.
TESBURG IND ANA 47170
812 752-2344

HARTOLDMON0095850

WHEREFORE he Plaintiffs, Ralph J. Biehle and Alberta J. Biehle, demand judgment against the Defendants, in an amount that will fairly and fully compensate them for their losses, costs of this action, and all other just and proper relief.

COUNT II

Strict Liability

12. Plaintiffs incorporate by reference those allegations contained in Rhetorical Paragraphs 6 through 11, inclusive.

13. The Defendant, Monsanto Company, and the other Defendants who are not citizens of the State of Indiana, designed, assembled, manufactured, made, sold, delivered, or placed into the stream of commerce, a defective and unreasonably dangerous product to the public and to the Plaintiffs and that such product (PCB) in conjunction with the silos, remained in a substantially unchanged condition until entry to the Plaintiffs.

14. The defective and unreasonably dangerous product proximately caused injury to the Plaintiffs.

15. As a result of the defective and unreasonably dangerous product, the Plaintiffs received the following injuries:

a. Damage and contamination of silos
b. Damage to dairy cattle and milk
c. Loss of use of both dairy cattle and silos
d. Loss of farm business and income
e. Mental distress
f. Personal injuries to Ralph J. Biehle
g. Medical bills
h. Pain and suffering
i. Permanent injury and mental anguish

WHEREFORE, the Plaintiffs, Ralph J. Biehle and Alberta J. Biehle, demand judgment against the Defendant, Monsanto Company, and the other Defendants who are not citizens of the State of Indiana, in an amount that will fairly and fully compensate them for their losses, costs of this action, and all other just and proper relief.

AMES B. RAILING
ATTORNEY AT LAW
WEST WARDELL ST.
TSBURG, INDIANA 47170
(812) 752-2344

HARTOLDMON0095851

COUNT III

Negligence

16. Plaintiffs incorporate by reference those allegations contained in Rhetorical Paragraphs 6 through 15, inclusive

17. The Defendant, Monsanto Company, and the other De who are not citizens of the State of Indiana, either indivi or in concert, were negligent.

18. Such Defendants' negligence proximately caused in to the Plaintiffs.

19. As a result of the negligence of such Defendants, Plaintiffs received the following injuries:

a. Damage and contamination of silos

b. Damage to dairy cattle and milk

c. Loss of use of both dairy cattle and silos

d. Loss of farm business and income

e. Mental distress

f. Personal injuries to Ralph J. Biehle

g. Medical bills

h. Pain and suffering

i. Permanent injury and mental anguish

WHEREFORE, the Plaintiffs, Ralph J. Biehle and Alberta J. Biehle, demand judgment against the Defendant, Monsanto Company, and the other Defendants who are not citizens of the State of Indiana, in an amount that will fairly and fully compensate them for their losses, costs of this action, and all other just and proper relief.

COUNT IV

Fraudulent Concealment

20. Plaintiffs incorporate by reference those allegations contained in Rhetorical Paragraphs 6 through 19, inclusive.

21. The Defendant, Monsanto Company, and the other Defendants who are not citizens of the State of Indiana, either individually or in concert, fraudulently concealed the dangerous and toxic condition of the silos and the lining of said silos, of the Plaintiffs.

JAMES B. RAILING
ATTORNEY AT LAW
3 WEST WARDELL ST.
ROSSBURG, INDIANA 47170
(812) 752-2344

HARTOLDMON0095852

22. The Plaintiffs were injured as a result of the fraudulent concealment of such Defendants in the following manner:

a. Damage and contamination of silos

b. Damage to dairy cattle and milk

c. Loss of use of both dairy cattle and silos

d. Loss of farm business and income

e. Mental distress

f. Personal injuries to Ralph J. Biehle

g. Medical bills

h. Pain and suffering

i. Permanent injury and mental anguish

WHEREFORE, the Plaintiffs, Ralph J. Biehle and Alberta J. Biehle, demand judgment against the Defendant, Monsanto Company, and the other Defendants who are not citizens of the State of Indiana, in an amount that will fairly and fully compensate them for their losses, costs of this action, and all other just and proper relief.

COUNT V

Willful and wanton and intentional disregard of the rights of the Plaintiffs

23. Plaintiffs incorporate by reference those allegations contained in Rhetorical Paragraphs 6 through 22, inclusive.

24. The Defendant, Monsanto Company, and the other Defendants who are not citizens of the State of Indiana, acted either individually or in concert, willfully and wantonly or with intentional disregard to the rights of the Plaintiffs, and said conduct caused injury to the Plaintiffs.

25. The Plaintiffs are entitled to punitive damages as a result of such action of such Defendants.

WHEREFORE, the Plaintiffs, Ralph J. Biehle and Alberta J. Biehle, demand Judgment against the Defendant, Monsanto Company, and the other Defendants who are not citizens of the State of Indiana, for punitive damages in a reasonable amount in addition to the compensatory damages, costs of this action, and all other just and proper relief in the premises.

James B. Railing

JAMES B. RAILING
Attorney for Plaintiff

JAMES B. RAILING
ATTORNEY AT LAW
WEST WARDELL ST.
TTSBURG, INDIANA 47170
(812) 752-2344

HARTOLDMON0095853

JAMES B. RAILING
Attorney at Law
69 West Wardell Street
Scottsburg, Indiana 47170
(812) 752-2344

JOHN VARGO
Attorney at Law
300 Inland Building
156 East Market Street
Indianapolis, Indiana 46204

ES B. RAILING
ORNEY AT LAW
EST WARDELL ST.
LPS. INDIANA 47170
12) 752-2344

HARTOLDMON0095854