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December 19, 1975

Mr. John O. Moomaw
8 East Main Street
Bloomfield, Indiana 47425

Re: Finis Flynn vs. Bloomfield Silo Co.
Clifford Ard vs. Bloomfield Silo Co.

Dear Mr. Moomaw:

At the request of Mr. Lon MacFarland, I have reviewed the files regarding the above styled actions. The attorneys for the plaintiffs have made no steps to set these cases for trial, although our new Judge has been setting several cases for 1976. It would be my opinion that at the earliest, these could be tried in the summer term of Pulaski Circuit Court in 1976.

I have done an extensive search of the file and review of the pleadings in both cases. As you realize, we have only taken the deposition of Finis Flynn and have never taken that of Clifford Ard. Mr. MacFarland suggested that it might be helpful to us at this point to take the deposition of Mr. Ard, which I will be more than happy to do if you so advise. Their losses are basically the same and I feel that their proof would be the same, but there may be something brought out by Mr. Ard's deposition which was not brought out by Mr. Flynn which would be helpful.

As to the damages claimed by Mr. Flynn, he first asked damages for 340 tons of silage at \$12 a ton or \$4,080. I asked him in his deposition for the figures as to how he arrived at the 340 tons, but have not received same. I am again requesting all the exhibits which I requested at the time of the deposition from his attorney and hopefully we will have them within the next few weeks. Of course, the tonnage is subject to adequate proof as is the \$12, but I do feel that \$12 is in the right ball park. The cost of removal of \$2.00 per ton asked by Finis Flynn is based on what he charges to fill a silo.

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Again, I feel that this is probably a reasonable charge in this community. All these figures were obtained by Clifford Ard and Finis Flynn from the County Extension Agent and from the Cumberland Production Credit Association. I believe it would be fair to say that these are probably slightly higher than what could be shown by another source, but are pretty reasonable figures. The next item of loss is the loss of grass which occurred because of the polluted silage being piled on a field and killing the grass. The other item of \$4,080.00 is for the loss of the barley silage which Finis Flynn is claiming because of the delay in getting his second silo constructed. This is a very debateable loss because his deposition did bring out the fact that he had another silo on the farm and had also used a trench silo in the past. I believe it would be his duty in mitigating the damages to use the older silo or even the trench silo and thus avoid this loss. Of course, he does state that some of the people working for Bloomfield told him that this silage would keep, but I believe that he failed in his duty to mitigate in not using the other available means of storing the silage. He also has a cost of removal here of \$680 after this barley silage rotted in the silo. Of course, he again has the debateable tonnage of 340 tons. It seems very much of a coincidence that both of the tonnages used are 340. Hopefully, this will be cleared up when he supplies his figures.

Finis Flynn asked for two losses of milk, one being between 1971 and 1972 or a decrease of 700 pounds per day at \$6.40 per hundred weight for \$16,352.00. By doing a little simple addition and division this comes out to a loss of 700 pounds per day for 365 days. I feel this would be extremely hard for Mr. Flynn to substantiate a loss of this much for this long a period of time. His other loss is exactly the same amount, or \$16,352.00, stating that this is a loss of 350 pounds per day at \$6.40 per hundred weight, but after doing a little simple addition and subtractions this comes out to 730 days or two years. Obviously, he has made a huge mistake in his calculations. Also, as you will notice this is for the period of 1969 to 1971 and Mr. Flynn stated emphatically in his deposition that there was no loss of milk until he removed the polluted silage in the summer of 1971. I don't believe they can substantiate this loss at all. I feel that this was probably one thrown in to inflate the figures even more than they are already inflated.

It is also interesting to note that in Mr. Flynn's original Complaint he stated a loss of 170 tons of silage instead of the 340 tons, and the loss of barley silage due to the delay in building the second silo was 300 tons rather than 340 tons

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as in the amended complaint. Also, his loss of milk in the original Complaint was 700 pounds per day at \$6.40 per hundred weight for six months or \$8,064.00. Obviously, in his amended complaint he has extremely inflated the values as well as the tonnages involved.

As to the losses incurred by Mr. Ard, he only states that the loss of milk was in the amount of \$18,000.00, and does not give the tonnages nor does he give the price per hundred weight he was receiving. I am sure that he was selling his milk to Southern Belle as was Mr. Flynn and that he was receiving the \$6.40 per hundred weight. Ofcourse, he also claimed some damage to some machinery in unloading the polluted silage and a cost of \$2.00 per ton, being the same figure as used by Mr. Flynn, for removing the polluted silage from the silos. He states a figure of \$6,480.00 for loss of silage which at \$12.00 per ton would figure out to be around 540 tons. In his original Complaint he asked for damages at \$2.00 a ton for removal of 250 tons, but then he turns around and asks for loss of silage at \$12.00 per ton for 540 tons.

Mr. Ard makes the statement in his pleadings that he suffered a loss of milk production through 1969, 1970 and 1971. As stated above, Mr. Flynn stated that he suffered no loss in milk production until he got rid of the polluted silage and put his cows on grass. I don't believe that Mr. Ard can substantiate this loss of production until after the polluted silage was thrown out because I do not feel that the polluted silage would cause a decrease in milk production even though it may cause an impurity in the milk.

As stated to Mr. MacFarland, I don't believe a jury in this area would have any trouble finding liability on the defendant. Obviously, the basic question is going to be the amount of damage. I feel that probably both of these claims can be settled for a total of \$10,000.00 and I feel that this is a reasonable settlement figure, even in view of some of the doubtful figures used by the plaintiffs. Of course, I would not extend this offer until the exhibits are filed to the depositions and the milk records are supplied to substantiate any milk production loss. Our last offer of \$7,000.00 has been flatly refused, but I feel like \$10,000.00 would settle both of these cases. Please advise.

Yours very truly,


JOE L. TRAVIS

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P.S. I received a motion to set for trial in both cases this morning. Trial motion being set for hearing on Jan. 16. I will advise of outcome.

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