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)

To DMM after Hand delivered 11/29/78 to JLG in Indianapolis

FIRST AMENDED 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 of material used by Bloomfield was latently defective in that it contained an excessive quantity of polychlorinated

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biphenyls (a/k/a PCBs), an environmental contaminant which is regulated 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 Twenty-five Thousand Dollars ($25,000.00).

WHEREFORE, Plaintiff prays for judgment against Bloomfield in the amount of Twenty-five Thousand Dollars ($25,000.00), together with his costs and all other relief proper in the premises.

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 Twenty-five Thousand Dollars ($25,000.00).

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WHEREFORE, Plaintiff prays for judgment against Bloomfield in the amount of Twenty-five Thousand Dollars ($25,000.00), together with his costs and all other relief proper in the premises.

James P. Quinn

COUNT III.
STRICT LIABILITY

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

1. Plaintiff incorporates herein by reference hereto Rhetorical Paragraphs 1 through 4 of Count I of this complaint.

2. The compound or material used and sold by Bloomfield was in a defective condition that was unreasonably dangerous to Plaintiff, his property and any consumers of the milk obtained from Plaintiff's dairy herd, in that said compound or material contained an excessive quantity of poly-chlorinated biphenyls (a/k/a PCBs), an environmental contaminant which is regulated and restricted by state and federal law.

3. As a direct and proximate result of the defective condition of the sealant or coating sold and used by Bloomfield, the silo and feed grain therein has been contaminated, the dairy herd has been contaminated by the feed grain, and the milk produced by the dairy herd has been contaminated, thereby forcing Plaintiff to destroy feed grain and milk, to have the silo sandblasted and recoated, and incur other expenses and damages in the total amount of Twenty-five Thousand Dollars ($25,000.00).

WHEREFORE, Plaintiff prays for judgment against Bloomfield in the amount of Twenty-five Thousand Dollars ($25,000.00) together with his costs and all other relief proper in the premises.

James P. Quinn

COUNT IV.
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.

WHEREFORE, Plaintiff prays judgment against Monsanto Company and Monsanto Enviro Chem Systems, Inc., jointly and severally, in the amount of Twenty-five Thousand Dollars ($25,000.00), together with costs and such other relief as may be proper in the premises.

James P. Quinn

COUNT V.
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 IV.

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

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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 Twenty-five Thousand Dollars ($25,000)

WHEREFORE, Plaintiff prays for judgment against Monsanto Company and Monsanto Enviro Chem Systems, Inc., jointly and severally in the amount of Twenty-five Thousand Dollars ($25,000), together with costs and such other relief as may be proper in the premises.

James P. Quinn

COUNT VI.
STRICT LIABILITY

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

1. Plaintiff incorporates herein by reference hereto Rhetorical Paragraphs 1, 2 and 4 of Count IV of this complaint.

2. Said product was in a defective condition unreasonably dangerous to Plaintiff, his property, and consumers of milk obtained from Plaintiff's dairy herd, in that said product contained an excessive quantity of PCBs which contaminated Plaintiff's property and products.

3. As a direct and proximate result of the defective condition of the sealant manufactured, sold and distributed by Monsanto and applied to Plaintiff's property, Plaintiff's silo and feed grain therein have been contaminated, and the dairy herd and milk produced therefrom has been contaminated and rendered unmarketable, thereby forcing Plaintiff to destroy feed grain and milk, to have his silo sandblasted and recoated, and to incur other expenses and damages in a total amount of Twenty-five Thousand Dollars ($25,000.00).

WHEREFORE, Plaintiff prays for judgment against Monsanto in the amount of Twenty-five Thousand Dollars ($25,000) together with his costs

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and all other relief proper in the premises.

James P. Quinn

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing First Amended Complaint and Notice of First Amended Complaint upon the following:

Rocap, Rocap, Reese & Young
708 Union Federal Building
45 North Pennsylvania Street
Indianapolis, Indiana

Donaldson & Andreoli
129 North Meridian Street
Lebanon, Indiana 46052

James P. Quinn

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