IN THE SUPERIOR COURT OF CLARKE COUNTY, GEORGIA

HARROLD'S HATCHERY, INC., and HARROLD'S POULTRY FARM INC.,	)	
Plaintiffs	)	CIVIL ACTION NO. 23329
VS.	)	
SOUTH PACIFIC PROTEINS, INC., INTERNATIONAL PROTEINS CORPORATION, EAST COAST TERMINALS, INC., SIMPSON GRAIN COMPANY, INC., MONSANTO COMPANY, and JOY MANUFACTURING COMPANY,	)	COMPLAINT
Defendants	)	

HARROLD'S HATCHERY, INC. and HARROLD'S POULTRY FARM, INC., hereinafter called respectively "Hatchery" and "Farm", as Plaintiffs, bring this complaint for damages against SOUTH PACIFIC PROTEINS, INC., INTERNATIONAL PROTEINS CORPORATION, EAST COAST TERMINALS, INC., SIMPSON GRAIN COMPANY, INC., MONSANTO COMPANY, and JOY MANUFACTURING COMPANY, hereinafter called respectively "South Pacific", International", "East Coast", "Simpson", "Monsanto", and "Joy", as Defendants, and show:

1.

Plaintiffs are corporations organized under the laws of Georgia with their principal office and place of business in Clarke County, Georgia.

2.

Defendants are foreign corporations subject to the jurisdiction of this Court by virtue of the acts, transactions and matters hereinafter set out.

3.

Plaintiffs are family owned corporations, having common stockholders and officers, and being engaged in closely interrelated operations in the poultry business. Plaintiff Farm maintains flocks of laying hens, producing eggs which are supplied

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to Plaintiff Hatchery. Plaintiff Hatchery then incubates and hatches these eggs and sells the chicks. The operation is a large one, requiring large quantities of feed for the laying hens, and the Farm prepares this feed from ingredients bought from various sources.

4.

Defendants South Pacific, International, and East Coast are likewise interrelated corporations engaged in the business of importing Peruvian fishmeal into the United States and selling it through wide areas of the United States. The fishmeal is brought from Peru by ship to the port at Wilmington, North Carolina, where it is unloaded and processed, as will be hereinafter related, and from Wilmington shipped by land to the ultimate purchasers and users.

5.

The processing of said fishmeal at Wilmington by said Defendants at the times involved herein, consisted of passing the fishmeal through a screw conveyer type pasteurizer in which, as the meal was moved along by the screw conveyer it was heated by a hot liquid circulated through the screw.

6.

Said pasteurizer was designed, built and installed by Defendant Joy and the liquid circulated therein was manufactured, furnished and sold by Defendant Monsanto for the purpose for which it was used.

7.

In the manufacture of said heating liquid, Monsanto used polychlorinated biphenyl, hereinafter called PCB, which had desirable properties for use as a heat exchange liquid, but which was known to be harmful to animal life and especially to poultry if even minute quantities should get into the feed eaten by them.

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8.

Said pasteurizer was installed and placed in use in the early summer of 1970. In April of 1971 Plaintiffs purchased a truck load, about 23 tons, of the pasteurized fishmeal through a broker in Atlanta, Georgia, who arranged the sale and delivery with Defendant International. Because of the size of the sale, being a truckload rather than a railroad carload, Defendant International invoiced the load to Defendant Simpson for delivery FOB Wilmington, and Defendant Simpson by truck picked up the fishmeal at Wilmington and transported it to Plaintiffs' place of business in Clarke County, Georgia, and delivered it to Plaintiffs, who paid Defendant Simpson for the meal.

9.

Prior to the processing of the meal sold to Plaintiffs, the heat exchange liquid had been leaking from the pasteurizer, and the Defendants other than Simpson had knowledge or notice of such leakage and the dangers thereof, but continued to use the PCB in the heat exchanger and to sell the fishmeal pasteurized in the leaking equipment. The fishmeal so sold and delivered to Plaintiffs was heavily contaminated with PCB, unknown to Plaintiffs, and thereby rendered unfit for use for which it was sold, being unfit for use as an ingredient in poultry feed.

10.

Plaintiffs, having no knowledge or notice of the presence of the PCB in the fishmeal, began using the fishmeal in the feed fed to the hens on the Farm. As a result of eating the contaminated fishmeal, the laying hens accumulated the PCB in their systems, and it affected the eggs they laid, so that most of the eggs would not hatch and those that hatched produced defective chicks. As a result thereof Plaintiffs were forced to destroy thousands of valuable hens, eggs and chicks, and suffered great losses and expenses in and to their property and businesses, including loss and damage to the confidence and good-will of their customers they had enjoyed.

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11.

Said losses and expenses damaged Plaintiff Hatchery in an amount not less than $400,000.00, including $149,000.00 value of chicks which failed to hatch from eggs incubated without knowledge they were contaminated, $5,310.22 costs of extra labor required, $84,936.49 operating expenses incurred, $19,596.93 loss of profits, and $150,000.00 loss of business reputation and good-will, past, present and future.

12.

Said losses and expenses damaged Plaintiff Farm in an amount not less than $166,443.84, including $4,641.65 cost of said fishmeal; $761.39 cost of feed mixed with fishmeal before contamination discovered; $3,400.00 labor and expense, including destruction of poisoned hens; $1,209.25 cost of drugs and testing; $6,341.25 lost salvage value of spent hens; and $150,000.00 loss of egg production.

13.

Defendants South Pacific International and Simpson are liable to Plaintiffs for their said damages by virtue of said Defendants' breach of warranties, express and implied, of the quality of said fishmeal, freedom from contamination, and fitness for use as an ingredient in chicken feed. Said Defendants are further liable to Plaintiffs for said damages on account of the failure of said Defendants to test said fishmeal to insure its purity before selling it to be used as an ingredient in chicken feed.

14.

All the named Defendants other than Simpson are liable to Plaintiffs for said damages on account of the joint and concurring negligence of said Defendants in the design, installation and use of the autoclave and the heat exchange liquid for the purpose of pasteurizing the fishmeal, in continuing to supply said liquid for use in the pasteurizer after it became known,

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and for negligently and carelessly causing the contamination of the fishmeal with the PCB.

15.

Defendants Monsanto, Joy, South Pacific and East Coast are liable to Plaintiffs for punitive damages for their willful disregard of their duty to the public and to Plaintiffs not to cause contamination of the fishmeal with PCB, they having jointly and severally violated such duty in designing and constructing said pasteurizer to use PCB, in supplying PCB for use in it and continuing to use PCB in it after leakage was apparent, and in selling fishmeal they knew was contaminated with PCB.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

For actual damages, Plaintiff Hatchery the sum of $400,000.00 and Plaintiff Farm the sum of $166,463.84 against each and all the Defendants.

For punitive damages, Plaintiff Hatchery the sum of $2,000,000.00 against Defendants Monsanto, Joy, South Pacific and East Coast, jointly and severally, and Plaintiff Farm a like sum of $2,000,000.00 against said Defendants Monsanto, Joy, South Pacific and East Coast, jointly and severally.

FORTSON, BENTLEY AND GRIFFIN
Attorneys for Plaintiffs

By /s/ Edwin Fortson
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ARROLD'S HATCHERY, INC., and
ARROLD'S POULTRY FARM, INC.

PLAINTIFF

VS.

OUTH PACIFIC PROTEINS, INC.
NTERNATIONAL PROTEINS CORPORATION
AST COAST TERMINALS, INC.
IMPSON GRAIN COMPANY, INC.,
ONSANTO COMPANY and
OY MANUFACTURING CO.

DEFENDANT

SUMMONS

THE SUPERIOR COURT FOR THE
COUNTY OF CLARKE, STATE OF GEORGIA

Civil Action, File No. 23329

To the with-in named Defendant:

You are hereby summoned and required to file with the Clerk of said Court and serve upon Edwin Fortson, Plaintiff's Attorney, whose address is Southern Mutual Building Athens, Ga., 30601 an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This the 6th day of July 1972

Clerk, Superior Court
Clarke County, Georgia

SHERIFF'S ENTRY OF DATE OF SERVICE

TO THE DEFENDANT UPON WHOM THIS COMPLAINT IS SERVED:

THIS COPY OF COMPLAINT AND SUMMONS WAS SERVED UPON YOU ON THE 7 DAY OF July, 1972.

SHERIFF, CLARKE COUNTY, GA.

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