STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE COUNTY OF HURON

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CIRCUIT COURT
HURON COUNTY, MICHIGAN
24th Judicial Circuit
EDWARD A. SWACKHAMER
County Clerk
dated: 3-2-77
Bad Axe, Michigan
48413

DALE L. SCHULZ & CHRISTINE M. SCHULZ
Plaintiffs

Attorneys: CUBITT & CUBITT
H. Dale Cubitt P12374
186 E. Huron Ave.
Bad Axe, Michigan 48413

-vs-

File:

MICHIGAN SILO COMPANY, A Michigan Corporation,
C & B SILO CO., A Michigan Corporation,
MONSANTO INDUSTRIAL CHEMICALS CO., a Corporation
Defendants

COMPLAINT

Plaintiffs, by their attorneys CUBITT & CUBITT, complaint of the defendants and say:

Count I

1) That plaintiffs are residents of Huron County, Michigan; that defendants Michigan Silo Company and C & B Silo Co. are both Michigan corporations with their principal offices in Charlotte, Michigan, hereinafter referred to as Michigan Silo and C & B Silo; that defendant Monsanto Industrial Chemicals Co. is a corporation with an office at 800 North Lindberg Blvd., St. Louis, Missouri 63166, hereinafter referred to as Monsanto.

2) That the plaintiff Dale L. Schulz was born and raised on a dairy farm located in Section 12, Winsor Township, Huron County, Michigan and has worked on said farm throughout his entire life, and he and plaintiff Christine M. Schulz are presently on said farm and reside thereon.

3) That the plaintiff Dale L. Schulz acquired a one-third interest in the dairy cattle on the premises in 1964, became a one-half owner of said dairy animals in 1967 and acquired the entire interest in the dairy cattle in 1971 at which time

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he obtained an option on the purchase of said farm and exercised said option subsequently thereto and is presently, along with plaintiff Christine M. Schulz, the owner of said premises; that all of the plaintiff's acquisitions were from the father of plaintiff Dale L. Schulz, namely William Schulz.

4) That in 1962 William Schulz contracted with Michigan Silo to build a 20 x 50' silo, which silo was completed in 1962; that William Schulz contracted with Michigan Silo to build a 24 x 65' silo which silo was completed in 1964; that thereafter the plaintiff Dale L. Schulz contracted with Michigan Silo to build a 20 x 20' extension on top of the 20 x 50' silo, which extension was completed in 1966 by C & B Silo and C & B Silo received the final payment for same.

5) That defendant Monsanto supplied to Michigan Silo, through its factories Concrete Silo at Bloomfield, Indiana and Massilon, Ohio, an industrial clorinated hydrocarbon under the trade name of AROCLOR: that plaintiffs are informed and believe that defendant Monsanto specifically provided AROCLOR 1254 to Michigan Silo and that Michigan Silo used said ARCLOR 1254 in the preparation of its silo sealant known as CUMAR; that said CUMAR was used as a silo sealant on the above silos by Michigan Silo and by C & B Silo on the 20' extension to one of said silos.

6) That in 1967 plaintiff Dale L. Schulz and his father rented from Ronald W. Schulz, a neighbor, a 16 x 60' silo built by Michigan Silo and a 24 x 70' silo which was contracted to be built by Michigan Silo but was completed by C & B Silo who received payment therefor in the summer of 1966, which silos were sealed with CUMAR containing AROCLOR 1254 manufactured by defendant Monsanto; that said silos were used

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for young cattle and in particular heifers being raised for replacement in the main dairy herd.

7) That William Schulz has assigned all of his interest in this cause of action to Dale L. Schulz and Christine M. Schulz, plaintiffs herein.

8) That at the time plaintiff Dale L. Schulz rented the silos from his neighbor Ronald W. Schulz, he modified his dairy process, because of extended storage capacity, to feed his young cattle and heifers a heavy concentration of corn silage along with some ground ear corn and some oatlage, all from said silos.

9) That defendants Michigan Silo and C & B Silo expressly warranted to plaintiffs and their predecessors that the silo material and construction would be of good quality and workmanship and represented to plaintiffs and their predecessors that the silos in question would be good facility for storage of silage and would help produce the top quality silage for feeding dairy cattle and said silos were sold for the express purpose of storage and preparation of feed for dairy cattle.

10) That the defendants Michigan Silo and C & B Silo impliedly warranted that the silos in question were fit for the particular purpose for which they were sold and constructed and that the said defendants' products were merchantable.

11) That the CUNAR coating used in said silos was in fact heavily laden with an industrial clorinated hydrocarbon commonly known as Polychlorinated Biphcyls or "PCB", that the coating has saturated the silo walls and joints thereof and is inseparable from the silo in general and the use of the silos resulted in contamination of silage and feed contained therein with PCB.

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12) That plaintiff Dale L. Schulz, beginning in 1964, attempted to progressively improve his herd and over the years improve its level of production, and ultimately in 1967 or 1968 placed his heifers on a concentration of corn silage from the rented silos, particularly in an effort to improve his herd.

13) That no matter how hard plaintiff Dale L. Schulz tried and no matter what effort he put towards herd improvement, the best he could do was to stay at a relatively level rate of production; in addition, instead of any increase in production, he experienced conception difficulties with his dairy cows and heifers and production remained level or sometimes showed a decline rather than steadily improving.

14) That in September 1974 the plaintiffs were notified by a representative of the Michigan Department of Agriculture that the milk being produced on their farm contained a certain level of PCB which was believed to be coming from feed being contaminated in their silos and in the silos being rented from their neighbor by them; that said representative ultimately tested the silo walls on four silos and concluded that PCB was present in high concentration on said silo walls and was contaminating feed contained therein.

15) That plaintiffs were advised to cease using the silos and make other arrangements for placing of their corn crop to be taken off that fall in other type of feed containers; that plaintiffs did so at considerable expense and extra effort on their part; that they did immediately construct bunker silos and obtained necessary machinery and equipment to place their silage in said bunkers and to remove it therefrom for the purpose of feeding their dairy herd. That because said action was required, plaintiffs incurred substantial financial burden and various losses resulted,

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all from having to immediately change over their operation and abandon their silos as well as those being rented, and in addition certain valuable crops remained in said silos which were abandoned as not being proper feed for their dairy cattle.

16) That the plaintiffs sustained damages including loss of production, conception difficulties with plaintiffs' herd, substantial required capital outlay because of necessity of abandoning contaminated feed and storage facilities, extra storage losses because of necessity of going to bunker storage facilities, and in addition health damages and potential health damages to plaintiffs. That in addition plaintiffs are involved in continuous financing of their operations on funds they would have received had there not been a substantial loss sustained and had they not been required to expend considerable sums to change their operations which funds would have either been invested at interest or used to reduce liabilities to save interest and accordingly plaintiffs have further sustained damages for interest on money which they should have received but did not receive due to defendants breach of contracts and breach of warranties.

WHEREFORE plaintiffs request Judgment in their favor and against the defendants, jointly and severally, in the sum of $500,000 together with interest and costs of suit.

Count II

Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 16 in Count I and further say:

17) That the defendant Monsanto is one of the world's largest producers of industrial chemicals and the sole manufacturer in the United States of Polychlorinated Biphenyls (PCBs) and sold PCBs under the trade name of

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AROCLOR, and specifically sold to defendant Michigan Silo ARCOLOR 1254 containing 54% chlorine.

18) That during the period defendant Monsanto sold AROCLOR 1254 to Michigan Silo, or its various factories in Michigan, Indiana, Ohio or Tennessee, or elsewhere, said defendant knew or reasonably should have known that said product was being used to manufacture silo coating sealant.

19) That defendant Monsanto expressly warranted its products through to buyers and ultimately said expressed warranty runs to plaintiffs herein; and, in addition defendant Monsanto impliedly warranted that its products, in particular AROCLOR 1254, are fit for the particular purpose for which they are purchased and that said products are merchantable.

20) That at the time defendant Monsanto sold AROCLOR 1254 to Michigan Silo or affiliates, it knew or should have known that PCBs were environmental contaminants and that said substances were toxic to both humans and animals.

21) That defendant Monsanto breached its said express and implied warranties and is liable to plaintiffs for all damages sustained.

22) That as a result of defendant Monsanto's breach of expressed and implied warranties, plaintiffs sustained the damages as enumerated in paragraph 16 above and elsewhere herein.

WHEREFORE plaintiffs request Judgment in their favor and against the defendants, jointly and severally, in the sum of $500,000 together with interest and costs of suit.

Count III

Plaintiffs reallege and incorporate herein by reference each and every allegations contained in paragraphs 1 through

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16 in Count I and paragraphs 17 through 22 in Count II, and further say:

23) That defendant Monsanto as manufacturer, producer and seller of AROCLOR 1254 which was ultimately supplied to plaintiffs in the silo coating known as CUMAR, owed plaintiffs the duty of care in regard to the manufacture, production and distribution and sale of said AROCLOR 1254.

24) Defendant Monsanto, because of its knowledge and expertise, owed plaintiffs a duty of care to assure that AROCLOR 1254 would not be used so as to contaminate feed and supplements fed to plaintiffs dairy cattle and further owed plaintiffs utmost due care and caution in assuring proper management and supervisory control over said AROCLOR 1254 so that said product would not be used in such a manner as to become a contaminate dangerous to plaintiffs dairy cattle or to plaintiffs themselves or the enviroment in which they live.

25) That defendant Monsanto breached said duty of due care in that it did not exercise proper care, management and control in the selection of labeling, licensing and manufacture of said AROCLOR 1254 and permitted said product to be purchased and used in such a manner as to become a contaminent on plaintiffs' premises causing adverse affects to plaintiffs' dairy herd and to plaintiffs themselves; that said failure to exercise due care consisted of both negligent actions and omissions on the part of defendant Monsanto.

26) That said defendant's failure to exercise proper care under all circumstances constituted negligence and caused great damage to plaintiffs' dairy operations and caused contamination of plaintiffs' farm lands and buildings, and caused other damages as more particularly stated in paragraph 16 in Count I herein incorporated by reference.

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WHEREFORE plaintiffs request Judgment in their favor and against the defendant Monsanto in the sum of $500,000 together with interest and costs of suit.

Count IV

Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 16 Count I and paragraphs 17 through 22 Count II and paragraphs 23 through 26 in Count III, and further say:

27) That defendants Michigan Silo, C & B Silo and Monsanto knew or had reason to know that numerous farm families, including plaintiffs, consumed meat, milk and other products produced on their farms and that as a direct result of contamination of the silos owned or used by plaintiffs, which silos were used to store feed for the animals on plaintiffs' farm, the meat, milk and other products from the farm were likely to be contaminated and consumed directly by plaintiffs and result in health problems to the plaintiffs.

28) That plaintiffs herein did consume meat, milk and other products produced on plaintiffs' farm and as a result did consume large quantities of PCB which was contained in the feed fed to plaintiffs animals from said contaminated silos, which contamination was placed on said farm by defendants Michigan Silo and C & B Silo, which contamination was manufactured and provided to defendants Michigan Silo and C & B Silo by defendant Monsanto.

29) That as a direct result of the breach of expressed and implied warranties, and the negligence of said defendants, the plaintiffs suffered serious health problems and are likely to suffer severe and deleterious health problems for the remainder of their lives and their lives are likely to be shortened; that their effectiveness in performing their work and ultimately maintaining their livelihood is and will

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be severely diminished.

30) That as a direct and proximate result of the breach of express and implied warranties and negligence on the part of the defendants the plaintiffs herein have suffered loss of reputation because of problems in keeping creditors satisfied, mental anguish over their inability to rectify the situation not of their own making and the callous attitude of defendants towards their problems, and because of health problems and mental anguish they are unable to perform duties previously performed and engage in activities previously participated in.

WHEREFORE plaintiffs pray that a Judgment be entered in their favor against Michigan Silo Company, C & B Silo Co. and Monsanto Industrial Chemicals Co. jointly and severly in an amount not to exceed $750,000 which will compensate plaintiffs for their losses which losses will continue and increase during the pendency of this action, and in addition that said Judgment require said defendants to provide plaintiffs with medical dental and optical expenses during the rest of their lives.

CUBITT & CUBITT
Attorneys for Plaintiffs

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Dated: March 19, 1977

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