

JOHN O. MOOMAW
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8 EAST MAIN STREET
BLOOMFIELD, INDIANA 47424

August 17, 1976

Mr. Lon P. McFarland
McFarland, Colley, Blank and Jack
Attorneys at Law
Middle Tennessee Bank Building
Columbia, Tennessee 38401

Re: Clifford Ard v. Bloomfield Silo Co., Inc., et al
Finis Flynn v. Bloomfield Silo Co., Inc., et al

Dear Lon:

On Thursday, August 12, 1976, I had a conference with Mr. Porter, Mr. Crody and Mr. Helms of Bloomfield Silo Co., Inc. and Mr. Joe Travis, at the office of Mr. Travis in Somerset, Kentucky, concerning the recent trial of the Finis Flynn case. You have a copy of Mr. Travis' detailed report of the course of the trial, the evidence produced and the results.

Mr. Travis has filed a Motion to Correct Errors and a Judgment NOV, which Motion is set for argument August 20th.

Mr. Travis and I discussed the trial at some length and we are of the opinion that the Motions will be overruled.

We also are of the opinion that there is no reversible error in the record, except possibly on the grounds that the verdict is excessive. I have no optimistic feeling about the reversal of a jury verdict on the latter ground when it is within the evidence. The matter of permitting the reopening of plaintiff's case in chief is a matter of discretion in Kentucky as it is in Indiana and probably is not reversible unless the Appeal Court felt there was an abuse of that discretion.

Almost one hundred per cent of the damages proven in trial were the result of loss of silage and milk due to the presence of araclor in the silage and milk. This was confirmed by evidence to the effect that araclor was present in samples of silage and in silo scrappings.

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The Silo Company feels that it can not afford the cost of appeal including transcripts, briefs, appeal bond (to which is added a ten per cent penalty in Kentucky) in the event the motion is overruled.

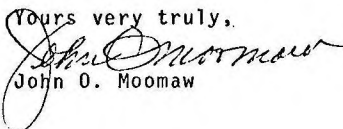
This would constitute a final judgment and in my opinion the Silo Company would then have discharged their agreement to defend. I consider the defense was competently handled. Silo Company would then look to your client Monsanto to either pay the judgment or finance the cost of appeal, including bond, at your election.

It is necessary at this point to mention that the Ard case probably can not be settled although we feel Ard may have some problems of proof. As before we intend to defend it. I am not optimistic that any jury would be other than sympathetic to the plaintiff. We have no objections to any efforts you may desire to make toward a disposition of the Ard case or any suggestions you may have concerning its defense, however, it would appear that he might have probable damages in the \$20,000.00 range.

As you probably are now aware, another case has been filed in Indiana naming both Monsanto and Silo as defendants, which is pending in the Daviess Circuit Court at Washington, Indiana. I have appeared for Silo but not for Monsanto, as our agreement does not cover this claim. As a matter of fact Silo Company did not build the structure involved nor furnish any material for it. Since the Complaint, a copy of which I enclose for your convenience, does not mention a date I can not even conclude at this point if the action is within the statute of limitations.

Mr. Travis will advise you of the ruling on our Motions. In the meantime, perhaps you might give us your thoughts as to the wishes of your client in the light of this and Mr. Travis' letter of July 19, 1976. I would appreciate these expressions in writing.

Yours very truly,


John O. Moomaw

JOM/fc

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CC: Mr. Joe L. Travis
Bloomfield Silo Co., Inc.

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