STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF EATON

A True Copy Attest
Joseph D. Brownell
County Clerk

BARTHOLOMEW GAIERA and KAREN GAIERA,

Plaintiffs,

vs

File No. 80- 875 - NP

MONSANTO CO., a Delaware Corporation; C&B SILO CO., a Michigan Corporation; and MICHIGAN SILO CO., a Michigan Corporation,

Defendants.

HUDSON E. DEMING

Webb A. Smith (P 20718)
Jonathan E. Raven (P 25390)
Attorneys for Plaintiffs

COMPLAINT AND DEMAND FOR TRIAL BY JURY

NOW COME Plaintiffs, by and through their attorneys, FOSTER, SWIFT, COLLINS & COEY, P.C., and by way of complaint against the above-named Defendants show unto this Honorable Court that:

I

Plaintiffs Bartholomew and Karen Gaiera presently own and operate a farm in Lenawee County, State of Michigan and have owned part or all of said farm since 1975.

II

Defendant C&B Silo Company, is a Michigan corporation doing business in Eaton County, Michigan, that is engaged in the business of installing, distributing, and maintaining silos in Michigan, with its registered agent in the State of Michigan located at 17302 Greeley Street, Detroit, Michigan.

III

Defendant Michigan Silo Company is or was a Michigan corporation that was engaged in the business of installing, distributing, and maintaining silos in Michigan, with its registered agent at RFD Lansing Road, Charlotte, Michigan.

IV

Upon information and belief, Defendant C & B Silo Company is a successor in interest to Defendant Michigan Silo Company by virtue of a sale and purchase of assets that constituted a basis continuation of the predecessor's business, and further, Defendant C & B Silo Company thereby succeeded to all assets and liabilities of Defendant Michigan Silo Company.

V

Upon information and belief, Defendant C & B Silo Company succeeded to the liabilities of its predecessor Defendant Michigan Silo Company by assuming some control over the predecessor's products by continuing to provide service for the predecessor's products or by possessing knowledge of a defect in its predecessor's products, to wit: the chemical compound containing PCB that was used to seal the silos used by Plaintiffs and their predecessors.

VI

Defendant Monsanto Company is a Delaware corporation engaged in the business of chemical products and sales throughout the State of Michigan, including Eaton County, with its registered agent in the State of Michigan located at 615 Griswold, Detroit, Michigan 48226.

VII

Defendant C&B Silo Company, which has purchased Defendant Michigan Silo Company, furnished and applied a chemical coating, believed to be known as "Cumar", containing polychlorinated biphenyl (hereinafter PCB), which is manufactured and distributed by Monsanto Company, to the silos located on Plaintiffs' property when Plaintiffs' predecessors, William and Peter Settles owned and operated the property.

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VIII

All the Defendants knew or should have known that the silos located on Plaintiffs' and their predecessors' property were used to store grain for feeding dairy animals.

COUNT I

BREACH OF IMPLIED WARRANTIES OF FITNESS

IX

Plaintiffs, hereinafter, incorporate by reference paragraphs I through VIII inclusive.

X

In 1971 or 1972, Defendant C&B Silo Company, which has purchased Michigan Silo Company furnished and applied a chemical coating containing PCB, which was manufactured and distributed by Defendant Monsanto Company, to silos located on Plaintiffs' farm, which was then owned and operated by William and Peter Settles.

XI

In selling, distributing, and applying a chemical compound containing PCB, all Defendants impliedly warranted to Plaintiffs that same was suitable and reasonably fit for the purpose for which it was intended, to wit:, to safely use as a coating to seal a silo from the elements of weather.

XII

Defendants knew or had reason to know the particular purpose for which the chemical coating containing PCB was to be used, and knew or had reason to know that William and Peter Settles and their successors, including the Plaintiffs, were relying on Defendants' reputation, skill and/or expertise to furnish proper and suitable coating and sealing compounds; and that Plaintiffs relied upon such Defendants' warranties by using the silos that were sealed with the chemical compound containing PCB.

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XIII

Defendants owed a duty to Plaintiffs to meet the standards of knowledge and expertise in the manufacture, production, packaging, and distribution of a chemical compound containing PCB which said Defendants represented to Plaintiffs and their predecessors that they had.

XIV

At the time of the sale, distribution, and application of the chemical compound containing PCB, the warranties of such product were not true and the product was not suitable and reasonably fit to be used for the purpose for which used by the Plaintiffs in that said chemical compound contaminated the grain feed that Plaintiffs' cows ate, thereby causing Plaintiffs' severe economic loss and damages from the contamination of their livestock.

XV

As a direct result of the breach of warranties by all Defendants, the Plaintiffs suffered the following injuries and damges:

(a) Loss of income from the loss of milk production;

(b) Loss of value of the cows as milkers, loss of herd value and losses due to requirement for rebuilding the herd including cow losses on new milkers; the loss of all cattle and livestock contaminated by or as a result of the silo contamination, including those who had died, and those who have been required to be destroyed;

(c) Reproduction losses of cattle and livestock, including animals not bred due to contamination, the failure of the contaminated animals to breed, extra breeding costs, loss of breeding fees and the like;

(d) Additional feed and care costs of contaminated animals who are not productive;

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(e) Additional expenses in replacing milk, together with additional labor, veterinary and medicine costs, and labor costs involved in burying or disposing of dead animals and milk;

(f) Damages arising from the contamination of farm equipment, buildings, structures, and the contamination of Plaintiffs' lands, including the loss of value of such equipment, buildings, structures and land for dairy cattle, milk production, livestock and the like;

(g) Loss of interest or income for the reason that Plaintiff could not meet nor keep current their obligations, including finance charges, debts and other expenses required in the maintenance of farm and dairy cattle, and livestock operations, as well as having been unable to obtain the sizeable profits which should have been received; which resulted in an inability to take advantage of the available business opportunities and profit therefrom;

(h) Loss of good will, confidence and reputation as producers of quality milk.

(i) Other severe economic damages, including but not limited to loss of credit, property, and financial well-being.

WHEREFORE, Plaintiffs pray that this Honorable Court grant judgments against Defendants in excess of $10,000 plus costs, interest, and attorney fees, incurred herein.

COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

XVI

Plaintiffs, hereafter, incorporate by reference paragraphs I through XV inclusive.

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XVII

In selling, distributing, and applying a chemical compound containing PCB to silos owned and operated by the Plaintiffs and their predecessors, all the above-named Defendants impliedly warranted to the Plaintiffs and their predecessors that the product supplied to the Plaintiffs was of a merchantable quality and reasonably fit and suitable for its general purpose and its intended and ordinary use, to wit: use as a chemical coating to seal feed silos from elements of weather.

XVIII

Plaintiffs, hereinafter, incorporate by reference paragraphs XII through XV inclusive.

WHEREFORE, Plaintiffs pray that the Honorable Court grant judgments against Defendants in excess of $10,000, for costs, interest, and attorney fees incurred herein.

COUNT III

NEGLIGENCE

XIX

Plaintiffs, hereinafter, incorporate by reference paragraphs I through XVIII inclusive.

XX

It was the duty of Defendant Monsanto, said manufacturer, not to manufacture and distribute for sale to the general public, and of Defendant C&B Silo Company, which has purchased Michigan Silo Company, said retailer, not to sell, distribute, or apply a chemical compound containing PCB which was dangerous, harmful or injurious to livestock who ate the grain stored in the silos that were sealed with the chemical compound.

XXI

All of the above-named Defendants had a duty to Plaintiffs to exercise reasonable care and diligence in

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testing, designing, producing, manufacturing, packaging and distributing a chemical compound containing PCB, used as a sealant in feed silos owned and operated by the Plaintiffs and their predecessors, so as to assure the chemical compound was of a proper analysis, after duly testing, and to insure that said chemical would not be harmful to livestock.

XXII

As a direct result of the disregard of duties owed to Plaintiffs by Defendants and the negligence of Defendants in the inadequate testing of the chemical compound; in failing to adequately warn the users of silos coated with the chemical compound containing PCB of the risk involved in the use of the silos, and in the distribution of said unsafe sealants containing chemical compounds with PCB to the Plaintiffs and their predecessors; Plaintiffs suffered severe damage and pecuniary loss in excess of $10,000.

XXIII

The alleged breach of duties owed Plaintiff constituting negligence by Defendant, Monsanto, in addition to those hereinabove mentioned, consist of:

(a) Manufacturing a feed silo sealing and coating compound containing PCB which was dangerous, harmful and injurious to livestock;

(b) Falsely implying that said chemical compound containing PCB was safe and fit for its particular purpose, to wit: to be used safely as a coating to seal the feed silos from elements of weather;

(c) Failing to adequately test the chemical compound containing PCB before introducing the product into the stream of commerce;

(d) Failing to anticipate that use of a chemical compound containing PCB would reduce milk production and cause the loss and destruction of dairy cows, and other adverse effects;

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(e) Failing to warn of the dangers to said livestock and the livestock fed from grain stored in silos coated with the compound containing PCB.

XXIV

The alleged breach of the duties owed to Plaintiffs constitute negligence on the part of Defendant C&B Silo Company and Defendant Michigan Silo Company, in addition to those hereinabove mentioned, consist of:

(a) Offering said compound containing PCB as a sealant for sale and application to the general public when it was in fact dangerous, harmful and injurious to livestock;

(b) Falsely implying that said chemical was safe and fit for its particular purpose, to wit: to be used safely as a coating to seal the silos from elements of weather;

(c) Distributing chemical compounds containing PCB before having adequate knowledge of its effect on livestock; and

(d) Failing to adequately warn of the potential dangers to livestock after application and use of the compound containing PCB in silos as a sealant.

XXV

All Defendants, in their acts as aforesaid, violated the duty of reasonable care and diligence owed of them to Plaintiffs; and that such acts constitute negligence which is a direct and proximate cause of Plaintiffs' following injuries and damages:

(a) Loss of income from the loss of milk production;

(b) Loss of value of the cows as milkers, loss of herd value and losses due to requirement for rebuilding the herd including cow losses on new milkers; the loss of all cattle and livestock contaminated by or as a result of the

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silo contamination, including those who had died, and those who have been required to be destroyed;

(c) Reproduction losses of cattle and livestock, including animals not bred due to contamination, the failure of the contaminated animals to breed, extra breeding costs, loss of breeding fees and the like;

(d) Additional feed and care costs of contaminated animals who are not productive;

(e) Additional expenses in replacing milk, together with additional labor, veterinary and medicine costs, and labor costs involved in burying or disposing of dead animals and milk;

(f) Damages arising from the contamination of farm equipment, buildings, structures, and the contamination of Plaintiffs' lands, including the loss of value of such equipment, buildings, structures, or land for dairy cattle, milk production, livestock and the like;

(g) Loss of interest or income for the reason that Plaintiff could not meet nor keep current their obligations, including finance charges, debts and other expenses required in the maintenance of farm and dairy cattle, and livestock operations, as well as having been unable to obtain the sizeable profits which should have been received; which resulted in an inability to take advantage of the available business opportunities and profit therefrom;

(h) Loss of good will, confidence and reputation as producers of quality milk;

(i) Other severe economic damages including but not limited to loss of credit, property, and financial well-being.

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WHEREFORE, Plaintiffs pray that this Honorable Court grant judgments against Defendants in excess of $10,000 plus costs, interest, and attorney fees, incurred herein.

COUNT IV

PRODUCTS LIABILITY

XXVI

This is a products liability action filed pursuant to the Michigan Products Liability Act, MCLA 600.2945 et seq;

XXVII

Plaintiffs hereinafter, incorporate by reference the allegations in Counts I through VIII herein.

XXVIII

Plaintiffs used silos coated with the compound containing PCB, which was produced, distributed or applied by all of the Defendants for purposes of feeding the livestock at Plaintiffs' farming operation located in the State of Michigan.

XXIX

Then and there, as a direct and proximate result of the chemical compound containing PCB being a defective product, neither sufficiently tested nor supplied with an adequate warning for users, Plaintiffs suffered severe livestock damages and injury.

XXX

The chemical compound containing PCB was a defective product in that it was not suitable or reasonably fit to be used for the purpose for which it was used in the silos owned and operated by Plaintiffs and their predecessors in that the same when applied contaminated feed stored in the silos, thereby causing adverse consequences to Plaintiffs' livestock.

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XXXI

Plaintiffs, as a direct result of the chemical compound containing PCB, suffered the following injuries and damages:

(a) Loss of income from the loss of milk production;

(b) Loss of value of the cows as milkers, loss of herd value and losses due to requirement for rebuilding the herd including cow losses on new milkers; the loss of all cattle and livestock contaminated by or as a result of the silo contamination, including those who had died, and those who have been required to be destroyed;

(c) Reproduction losses of cattle and livestock, including animals not bred due to contamination, the failure of the contaminated animals to breed, extra breeding costs, loss of breeding fees and the like;

(d) Additional feed and care costs of contaminated animals who are not productive;

(e) Additional expenses in replacing milk, together with additional labor, veterinary and medicine costs, and labor costs involved in burying or disposing of dead animals and milk;

(f) Damages arising from the contamination of farm equipment, buildings, structures, and the contamination of Plaintiffs' lands, including the loss of value of such equipment, buildings, structures or land for dairy cattle, milk production, livestock and the like;

(g) Loss of interest or income for the reason that Plaintiff could not meet nor keep current their obligations, including finance charges, debts and other expenses required in the maintenance of farm and dairy cattle, and livestock operations, as well as having been unable to obtain the sizeable profits which should have been received; which

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resulted in an inability to take advantage of the available business opportunities and profit therefrom;

(h) Loss of good will, confidence and reputation as producers of quality milk.

(i) Other severe economic damages including but not limited to loss of credit, property, and financial well-being.

WHEREFORE, Plaintiffs pray that this Honorable Court grant judgments against Defendants in excess of $10,000 plus costs, interest, and attorney fees, incurred herein.

Bartholomew Galera, Plaintiff

Karen Galera, Plaintiff

Subscribed and sworn to before me this 30th day of September, 1980.

JANET L. OHLENMACHER
Notary Public, Eaton County, MI
My Commission Expires October 6, 1982

Janet L. Ohlenmacher Blaid
Notary Public Acting in Ingham
Eaton County, Michigan
My Commission Expires: 10/6/82

FOSTER, SWIFT, COLLINS & COEY, P.C.
Attorneys for Plaintiffs

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(517) 372-8050

Dated: 9.30.80

DEMAND FOR TRIAL BY JURY

NOW COME Plaintiffs, by and through their attorneys, FOSTER, SWIFT, COLLINS & COEY, P.C., and hereby demand a trial by jury in this cause.

FOSTER, SWIFT, COLLINS & COEY, P.C.
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