Monsanto

FROM (NAME & LOCATION): [redacted]

DATE

CC: Aug 2, 1971

SUBJECT

REFERENCE

TO Mrs. Holly Groat

Confirming our conversation this morning, I would like you to please give top priority to preparation of an exhaustive legal memorandum on the following matter.

Facts

Monsanto is the only manufacturer of a polychlorinated biphenyl product known as "PCB" which it has been manufacturing for 30 or more years. PCB is used in a number of industrial applications, including an ingredient of industrial paints. Monsanto sells the product through distributors who have sold it to a silo manufacturer, who in turn used it in paints formulated, mixed and applied by the silo manufacturer to the interior of silos manufactured by it. Recently a state agricultural department has banned the sale of milk from herds of cows which have been fed on silage from such silos on the ground that the milk from such cows contained PCB in amounts in excess of standards established by the FDA. Presumably, the silage became contaminated by contact with the paint containing PCB or by flaking of the paint into the silage.

Prior to 1969, Monsanto had no knowledge that PCB might be harmful to animals or human beings. At that time Monsanto learned that PCB might be harmful to pelicans and shellfish. Monsanto has no knowledge at the present time that PCB is harmful to human beings and does not believe that any such knowledge exists.*

Questions

1. What duty, if any, does Monsanto have to the silo manufacturer, who has been sued by the dairy herd owner in the above set of facts, with respect to sales made prior to 1969; subsequent to 1969?

2. If any duty exists, what liability does Monsanto have to the silo manufacturer for breach of such duty?

DSW 440959

IN-10L

3. What duty does Monsanto have to the dairy herd owner in the above set of facts with respect to sales made both before and after 1969?

4. If any duty exists, what liability does Monsanto have to the dairy herd owner?

CBH

CBH/al

C. B. Holleran

*Attached hereto is an excerpt from the Congressional Record dated July 26, 1971 containing remarks by Representative Ryan regarding PCB which you might find interesting.

P.S. Also attached is a copy of letter from the Chicago law firm of Price, Cushman, Kick & Mahin dated July 26, 1971 asserting some additional "silo" claims.

CBH

DSW 440960

STLCOPCB4102585

Holly feels many are not precisely in point.

Chapman Chemical Co. v. Taylor,
215 Ark. 630, 222 S.W. 2d 820 (1949)

Lutheringer v. Moore, 31 Cal. 2d 489, 190 P 2d 1 (1948)

Waschak v. Moffat Coal Co., 379 Pa. 141, 109 A 2d 310 (1954)

Fritz v. E. I. duPont de Nemours & Co., 45 Del. 427, 75 A 2d 256 (1950)

Emroch, Pleading and Proof in a Strict Products Liability Case,
525 Ins. L. J. 581 (1966)

Pedroli v. Russell, 157 Cal. App. 2d 281, 320 P 2d 873 (1958)

Jamieson v. Woodward & Lothrop, 101 App. D.C. 32, 247 F 2d 23,
cert. denied, 355 U.S. 855, 2 L. Ed 2d 63 (1957)

Sylvania Elec. Prod., Inc. v. Barker, 228 F 2d 842 (1st Cir. 1955),
cert. denied, 350 U. S. 988, 100 L. Ed. 854

Celanese Corp. of America v. John Clark Industries, Inc., 214 F 2d 551
(5th Cir. 1954)

Weekes v. Michigan Chrome & Chemical Co., 352 F 2d 603 (6th Cir. 1965)

Anno., 78 A.L.R. 2d 594, 606 (1961)

Rest. (2d) of Torts, Sec. 338 (1965)

O'Donnell v. Asplundh Tree Expert Co., 13 N. J. 319, 99 A 2d 577 (1953)

Johnson v. West Fargo Mfg. Co. 255 Minn. 19, 95 N.W. 2d 497 (1959)

DeEugenio v. Allis-Chalmers Mfg. Co., 210 F 2d 409 (3rd Cir. 1954)

Nishida v. E. I. duPont de Nemours & Co., 245 F 2d 768 (5th Cir. 1957)

Bertone v. Turco Products, Inc., 252 F 2d 726 (3d Cir. 1958)

Weekes v. Michigan Chrome & Chemical Co., 352 F 2d 603 (6th Cir. 1965)

Richardson v. De Luca, 53 So. 2d 199 (La.App. 1951)

Heck v. The Beryllium Corporation, 424 Pa. 140, 226 A. 2d 87 (1966)

Hopfinger v. Dow Chemical Co., Docket No. C-70-110 (N.D. Ohio 1970)

Carbone v. Ursich (The Del Rio), 209 F 2d 178 (9th Cir. 1953)

STLCOPCB4102586