

STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE COUNTY OF HURON

RONALD J. HYZER & DEBORAH J. HYZER
Plaintiffs

Attorneys: CUBITT & CUBITT
John T. Ferris P25534
186 E. Huron Ave.
Bad Axe, MI 48413

-vs-

File 77

NZ

MICHIGAN SILO COMPANY, A Michigan Corporation,
C & B SILO CO., A Michigan Corporation;
MONSANTO COMPANY, A Corporation
Defendants

COMPLAINT

Plaintiffs, by their attorneys CUBITT & CUBITT, complain
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 Company are both Michigan corporations with their
principal offices in Charlotte, Michigan, hereinafter
referred to as Michigan Silo and C & B Silo; that
defendant Monsanto Company is a corporation with an
office at 800 North Lindberg Blvd., St. Louis, Missouri
63166, hereinafter referred to as Monsanto.

2) That the plaintiff Ronald J. Hyzer was born and
raised on a dairy farm located in Section 19, Hume Township
Huron County, Michigan and still resides on a farm in said
Section 19 with his wife, plaintiff Deborah J. Hyzer, and
the subject matter of this complaint is located on the
premises where they reside.

3) That in the late spring or early summer of 1966
the plaintiff Ronald J. Hyzer contracted with Michigan
Silo to build a 16 x 60' silo, which silo was completed

in August or September 1966 by defendant C & B Silo and the final payment for same was made in September 1966.

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

5) That in the fall of 1966 the plaintiff put up sileage in said silo for their dairy herd; that at that time they were milking around 25 dairy cows; that thereafter they bought an additional 20 cows from a dairy herd with which they were familiar, and were afforded the pick of the herd; that subsequently they bought additional dairy cows from another herd with which they were familiar and also had the pick of that herd; that despite their efforts to improve their dairy herd by selecting good animals and culling poor animals over a period of four to five years, they failed to make the progress one would expect from such attempts in improvements, without any reasonable explanation for same.

6) That no matter how hard plaintiffs tried and no matter what efforts they put towards herd improvement, the best they could do was to stay at a relatively poor rate of production instead of any increase production per cow; they experienced conception difficulties with the dairy cows and heifers and production remained level or declined rather than steadily improving.

7) That in October 1974 the plaintiffs were advised that their milk showed a high level of PCB and tests were taken which showed the silo walls were found to have extremely high level of PCB present.

8) Plaintiffs were advised to cut down use of their silo and brought in additional hay and special feed which supposedly would drop the level of PCB in the milk below tolerance; however, despite the additional expense to plaintiffs, the tests stayed up above tolerance level and they were threatened with being excluded from all milk markets; that thereafter plaintiffs were forced to sell their dairy herd because they were about to be excluded from marketing milk; that accordingly they sold all of said dairy cows and heifers for beef at a substantial loss to plaintiffs.

9) That thereafter plaintiffs had the silo recoated for the sum of \$648, which was supposed to prevent the escape of PCB into the silage in said silo; that after recoating said silo plaintiffs entered into the beef business, buying young feeders and feeding them out, however plaintiffs are aware the the silo recoating has for all practical purposes disappeared and that PCB is now contaminating their steers and they expect to be shut out of the beef business under the new inspection procedure about to be instituted by the State of Michigan, accordingly they are being forced to abandon their silo at great additional loss

10) That defendants Michigan Silo and C & B Silo expressly warranted to plaintiffs that the silo material and construction would be of good quality and workmanship, and represented to plaintiffs that the silo in question would be good facility for storage of silage and would help produce the top quality silage for feeding dairy cattle and said silo was sold for the express purpose

of storage and preparation of feed for dairy cattle.

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

12) That the CUMAR coating used in said silo was in fact heavily laden with an industrial chlorinated hydrocarbon commonly known as Polychlorinated Biphenyls 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 silo resulted in contamination of silage and feed contained therein with PCB.

13) 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 facility, 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 contract and breach of warranties.

WHEREFORE plaintiffs request Judgment in their favor and against defendants, jointly and severally, in the sum of \$250,000.

Count II

Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs 1) through 13) in Count I and further say:

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

15) 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.

16) 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.

17) 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.

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

19) That as a result of defendant Monsanto's breach of expressed and implied warranties, plaintiffs sustained the damages as enumerated in paragraph 13) above and elsewhere herein.

WHEREFORE plaintiffs request Judgment in their favor and against the defendants, jointly and severally, in the sum of \$250,000, together with interest and costs of suit.

Count III

Plaintiffs reallege and incorporation herein by reference each and every allegation contained in paragraphs 1) through 13) of Count I and paragraphs 14) through 19) of Count II, and further say:

20) 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.

21) 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 feeder 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 and feeder cattle or to plaintiffs themselves or the environment in which they live.

22) 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 contaminant on plaintiffs' premises causing adverse effects to plaintiffs' dairy herd and feeder cattle and to plaintiffs themselves; that said failure to exercise due care consisted of both negligent actions and omissions

on the part of defendant Monsanto.

23) That said defendant's failure to exercise proper care under all circumstances constituted negligence and caused great damage to plaintiffs' dairy and feeder operations and caused contamination of plaintiffs' farm lands and buildings, and caused other damages as more particularly stated in paragraph 13) in Count I, herein incorporated by reference.

WHEREFORE plaintiffs request Judgment in their favor and against the defendant Monsanto in the sum of \$250,000, 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 13) in Count I, paragraphs 14) through 19) in Count II, and paragraphs 20) through 23) in Count III, and further say:

24) 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 silo owned or used by plaintiff, which silo was 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.

25) 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 silo, 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.

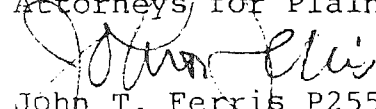
26) That as a direct result of the breach of expressed and implied warranties, and the negligence of said defendants, the plaintiffs suffered serious health problems and are likely to suffer severe and deleterious health problems for the remainder of their lives and their lives are likely to be shortened;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

That the severe health problems referred to above include but are not limited to the following: Plaintiff Deborah J. Hyzer has suffered five miscarriages and her last child was born 1 1/2 months premature and weighed 3 pounds 2 ounces; that said plaintiff has suffered emotional damages and has developed extreme nervous condition resulting in the necessity of her undergoing tubal ligation despite her religious beliefs.

27) 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 Company, jointly and severally in an amount not to exceed \$500,000 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
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Dated: August 31, 1977