IN THE SUPERIOR COURT FOR THE

COUNTY OF DOUGLAS, STATE OF GEORGIA

E. M. PATTERSON

Plaintiff

versus

CONCRETE SILO COMPANY
MONTEAGLE SILO COMPANY,

Defendants

CIVIL ACTION NO. 5565 p.102

COMPLAINT

Now comes E. M. Patterson, Plaintiff in the above styled action, and states his claim as follows:

COUNT ONE

1.

The Court has jurisdiction over the Defendants, Concrete Silo Company and Monteagle Silo Company, foreign corporations, pursuant to Georgia Code Ann. § 24-113.1 by virtue of the fact that the Defendant, Concrete Silo Company, carried on business within Douglas County, Georgia and that Concrete Silo Company has merged into Defendant, Monteagle Silo Company.

2.

In 1962, Plaintiff operated a large dairy farm in Douglas County, Georgia, and Plaintiff continues to operate a large dairy farm at the same location.

3.

In 1963, relying on the skill and judgment of the Defendant, Concrete Silo Company, Plaintiff contracted with said Defendant for the purchase and construction of two concrete silos on the aforesaid dairy farm operated by the Plaintiff for the express purpose of storing silage to be fed to the dairy

GEORGIA, DOUGLAS SUPERIOR COURT
Filed 20th day Jan 92

DSW 379777

STLCOPCB4100549

cattle belonging to Plaintiff.

4.

At the time of contracting for the purchase of said silos the Defendant had reason to know the particular purpose for which same would be used and that Plaintiff was relying on the Defendant's skill and judgment to furnish suitable goods for the intended purpose, and Defendant thereby warranted that said goods to be used in construction of the silos themselves would be fit for such purpose.

5.

The Defendant, Concrete Silo Company, by its agents and employees did provide the goods for the construction of the two silos on the above mentioned dairy farm belonging to Plaintiff. In construction thereof the Defendant did cause the interior walls of said silos to be coated with a substance known as "Cumar."

6.

Plaintiff further states that the Defendant, Concrete Silo Company, did not fulfill its implied warranty. Plaintiff was notified by the Georgia State Department of Agriculture that the milk produced by his dairy from October 2, 1970 thru July 29, 1971 contained large quantities of a toxic substance known as "PCB."

7.

The source of the "PCB" contamination was determined to be the product "Cumar" used to coat the interior walls of said silos, which product "Cumar" had been absorbed by and into the silage contained therein thereby poisoning the same.

STLCOPCB4100550

Without knowledge of the poisonous qualities of the silage, said silage was fed by Plaintiff to his dairy cattle, and in turn, the milk produced by such cattle was contaminated with toxic PCB.

8.

As a result of the foregoing fact, Plaintiff was notified by proper authority that milk containing such high quantities of PCB would be condemned and he would be prohibited from marketing same.

9.

Feeding cows the silage from said contaminated silos did, and would produce PCB contamination in milk from said cows in excess of the limit legally imposed. Accordingly, Plaintiff's silos were rendered useless and of no value.

10.

As a result of the breach of said implied warranty, Plaintiff has suffered damages in that, said silos are useless and will require dismantling and replacement; that in order to continue his operation through the winter, Plaintiff has been required to construct a temporary feed storage facility, obtain additional labor to service said temporary feed storage facility, suffer loss of feed stored in said temporary feed storage, and Plaintiff will be required to purchase a tractor equipped with a front-end loader in order to service said temporary feed storage facility.

11.

As a result of said breach of implied warranty, the dairy herd belonging to Plaintiff has been diminished in value

and further the pecuniary worth of Plaintiff's dairy business has been reduced.

12.

At a date following the purchase and construction of said silos, Defendant, Concrete Silo Company, merged into Defendant, Monteagle Silo Company. As a result thereof, Defendant, Monteagle Silo Company, is a successor to all liability of Defendant, Concrete Silo Company.

COUNT TWO

1.

As paragraph 1 of Count Two, Plaintiff incorporates, by reference, paragraphs 1 thru 12 of Count One above.

2.

Defendants negligently failed to inspect and test the product "Cumar", used by them on the interior walls of said silos to ascertain whether or not said product could be safely used as a lining for the silos constructed by them for Plaintiff.

3.

The Defendants negligently failed to ascertain from the manufacturer of the product "Cumar" whether or not the Monsanto Company had prescribed any restrictions, warnings or limitations concerning the use of the product "Cumar" as a lining or sealant for silos.

4.

Said negligence on the part of Defendants, along with the possible negligence of the Monsanto Company, damaged Plaintiff in that said silos are useless and will require dismantling and replacement; that in order to continue his operation through the winter, Plaintiff has been required to construct a temporary feed

STLCOPCB4100552

storage facility, obtain additional labor to service said temporary feed storage facility, suffered loss of feed stored in said temporary feed storage, will be required to purchase a tractor and necessary equipment to service temporary feed storage facility; has diminished the value of the dairy herd belonging to the Plaintiff and the value and pecuniary worth of the Plaintiff's dairy business.

WHEREFORE, Plaintiff prays that judgment in its favor be rendered in the sum of $80,000.00.

TISINGER & TISINGER

By: _____
Attorney for Plaintiff

ADDRESS:

202 Tanner Street

Carrollton, Georgia 30117

DSW 379781