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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NOS. 791160 & 791209

SOUTHERN STATES COOPERATIVE, INC.
and
FARMERS SERVICE COMPANY,

v. .....Appellants

A. DWIGHT DOGGETT,

.....Appellee

JOINT APPENDIX

William M. Harris
B. Thomas Reed
5735 Poplar Hall Dr.
Norfolk, Virginia 23502
Counsel for Southern States
Cooperative, Inc.

Rodham T. Delk, Jr.
229 Main Street
Smithfield, Virginia 23430
Counsel for Farmers Service Co.

Thomas L. Woodward, Jr.
153 East Washington St.
Suffolk, Virginia 23434
Counsel for
A. Dwight Doggett

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

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VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

A. Dwight Doggett Plaintiff

v. 3216

Farmers Service Company
Randolph E. Barlow, Jr., Registered Agent
Route 3, Box 3-B
Smithfield, Virginia 23430

Southern States Cooperative, Incorporated
E. M. Holdaway, Registered Agent
Southern States Building
627 East Main Street
Richmond, Virginia 23219 Defendants

Defendants are notified that plaintiff moves the Circuit Court of Isle of Wight County for judgment against them in the sum of Fifty Thousand ($50,000.00) Dollars, the same being due from defendants to plaintiff for this, to-wit:

(1) In December, 1977, plaintiff purchased from defendant Farmers Service Company certain bagged cattle feed to be used in his commercial farming operation in Isle of Wight County, said bagged cattle feed having been manufactured by defendant, Southern States Cooperative, Incorporated.

(2) January 9th, 1978, after said cattle feed had been consumed by plaintiff's cattle, a substantial number of said cattle became violently ill and a substantial number of said cattle died from a poison in said cattle feed, of which plaintiff was theretofore unaware.

(3) As the direct result of said poison being in

said bagged cattle feed, defendants have breached the implied warranties of merchantability and fitness for the general and particular purposes for which plaintiff intended said cattle feed to be used, for which the damages therefrom defendants are indebted to plaintiff.

(4) As the further direct result of the breach of said warranties listed above, plaintiff has suffered substantial consequential and incidental damages, for which defendants are further indebted to plaintiff.

A. DWIGHT DOGGETT

By _____
Counsel

Thomas L. Woodward, Jr.
153 East Washington Street
Suffolk, Virginia 23434

Counsel for Plaintiff

Filed in the Clerk's Office the 24th day of March, 1978

Writ Tax $ 5 00
Fee 2 50
Deposit 25 00
Total Paid $ 32 50

Teste:
H. E. Laine Jr., Clerk
Kathryn R. Willis, D. C.

SEPARATE ANSWER AND GROUNDS OF DEFENSE

Now comes Southern States Cooperative, Inc., and for its separate answer and grounds of defense to the above styled motion for judgment says as follows:

1. This defendant is not advised as to the allegations in paragraph one of the motion and calls for strict proof thereof.

2. This defendant is not advised as to the allegations concerning illness and deaths of cattle owned by the plaintiff, but denies that if such did occur from a poison, that said poison was in a feed bag when it was sold by this defendant.

3. This defendant denies that it has breached any warranty which it owed the plaintiff.

4. This defendant denies the allegations in paragraph four.

5. This defendant says that the plaintiff was negligent and that such negligence was the cause of his loss.

6. This defendant will rely upon any defenses which manifest themselves prior to or during the trial of this cause.

SOUTHERN STATES COOPERATIVE, INC.

By _____
Of Counsel

William M. Harris
Taylor, Gustin, Harris, Fears and Davis
5735 Poplar Hall Drive
Norfolk, Virginia 23502

VIRGINIA: IN THE CLERK'S OFFICE OF THE COUNTY OF ISLE OF WIGHT,
April 11 1978
RECEIVED AND FILED
W. E. Lane Jr. CLERK
Sharon N. Jones D.C.

I hereby certify that on the 10 day of April, 1978 a copy of the foregoing pleading was mailed to Mr. Thomas L. Woodward, Jr. 153 East Washington Street, Suffolk, Virginia 23434.

_____

DEMURRER

The defendant, Farmers Service Company, a Virginia corporation, appearing specially herein by counsel, demurs to the Motion for Judgment filed by the plaintiff herein and contends that the said Motion for Judgment does not state a cause of action and that it fails to state facts upon which the relief demanded can be granted, and in support thereof says as follows:

1. That the plaintiff has not alleged any specific act of negligence or other breach of any duty or warranty that the defendant, Farmers Service Company, may have owed to the plaintiff.

2. That the said Motion for Judgment has not alleged that the defendant, Farmers Service Company, acted in any manner whatsoever other than simply by receiving bagged cattle feed and purveying the same to the plaintiff without in any manner changing or otherwise affecting the composition of the said cattle feed or even changing or in any manner affecting the bag in which the said cattle feed was received and purveyed by the defendant, Farmers Service Company, none of which actions form any basis, in law or otherwise, for a claim by the plaintiff against the defendant, Farmers Service Company.

GROUNDS OF DEFENSE

Comes now the defendant, Farmers Service Company,

a Virginia corporation, by counsel, and for grounds of defense to the Motion for Judgment filed herein by the plaintiff, A. Dwight Doggett, says as follows:

1. That it neither admits nor denies the allegations contained in Paragraph 1 of the said Motion for Judgment, and calls for strict proof thereof on the part of the plaintiff.

2. That it specifically denies the allegations contained in Paragraphs 2, 3 and 4 of the said Motion for Judgment.

3. That Farmers Service Company gave no warranties to the plaintiff, either express or implied.

4. That it further states that any cattle feed which was consumed by the plaintiff's cattle was a mixture of bagged food supplement sold by the defendant, Farmers Service Company, to the plaintiff, and manufactured by the defendant, Southern States Cooperative, Incorporated, and other food materials either purchased by the plaintiff from other sources or manufactured by the plaintiff on his own premises, or both; that if any cattle feed fed to the plaintiff's cattle by the plaintiff contained any poison whatsoever which affected the plaintiff's cattle in any way, the said poison was, by the plaintiff's own negligence, placed in the said cattle feed when the plaintiff mixed the food supplement purchased from the defendant, Farmers Service Company, and manufactured by the defendant, Southern States Cooperative, Incorporated, with other food stuffs either purchased by the plaintiff from other sources or manufactured by the plaintiff on his own premises, or both.

5. That if the bagged food supplement manufactured by the defendant, Southern States Cooperative, Incorporated, and sold by the defendant, Farmers Service Company, to the plaintiff, contained any poison which affected the plaintiff's cattle, then the poison was placed in the said bagged food supplement by the defendant, Southern States Cooperative, Incorporated, and not by the defendant, Farmers Service Company; that the defendant, Farmers Service Company, purchased from the defendant, Southern States Cooperative, Incorporated, bagged cattle food supplement and sold the same bagged cattle food supplement to the plaintiff without in any manner changing or affecting the condition or packaging of the said bagged cattle food supplement; that the said bagged cattle food supplement sold by the defendant, Farmers Service Company, to the plaintiff, was received by the plaintiff from the said defendant, Farmers Service Company, in exactly the same condition as the defendant, Farmers Service Company, received the said cattle food supplement from the defendant, Southern States Cooperative, Incorporated.

6. That the defendant, Farmers Service Company, is not indebted to the plaintiff for any sum of money, for any reason or in any manner.

7. That the damages complained of by the plaintiff were occasioned by the primary negligence of the plaintiff for the reasons set forth above which was the sole proximate cause of the damages, if any, suffered by the plaintiff.

8. That this defendant will rely on any and all further defenses as may be disclosed by the evidence or

provable under the former plea of the general issue.

FARMERS SERVICE COMPANY

By _____
Counsel

Rodham T. Delk
Rodham T. Delk, Jr.
Delk and Barlow
229 Main Street
Smithfield, Virginia 23430

Counsel for defendant, Farmers
Service Company

CERTIFICATE

I hereby certify that a signed copy of the foregoing Demurrer and Grounds of Defense was mailed to Thomas L. Woodward, Jr., Esquire, 153 East Washington Street, Suffolk, Virginia, 23434, counsel for plaintiff, and William M. Harris, Esquire, Taylor, Gustin, Harris, Fears and Davis, P. O. Box 12756, Norfolk, Virginia, 23502, counsel for defendant, Southern States Cooperative, Incorporated, this 18th, day of April, 1978.

_____

VIRGINIA: IN THE CLERK'S OFFICE OF
THE COUNTY OF ISLE OF WIGHT.
April 18, 19 78
RECEIVED AND FILED
H E Laine Jr CLERK
Kathryn R Shields DC

Refused
9 A
EEB
3-16-79

INSTRUCTION NO._____

The Court instructs the jury that the burden is upon the plaintiff to show by a preponderance of the evidence that an unreasonably dangerous condition existed in the ProBlend 50 when the goods left the defendant's plant. Where the evidence shows that any one of several things may have caused the injury to the plaintiff, for some of which the defendant is responsible and for some of which he is not, and leaves to speculation and conjecture whether the ProBlend 50 was in an unreasonably dangerous condition when it left the defendant's plant, then the plaintiff has failed to establish a case, and you shall find your verdict for the defendant.

Refused
5A
EEB
3-16-79

INSTRUCTION NO._____

The Court instructs the jury that in this case A. Dwight Doggett, Jr. was the employee or agent of the plaintiff, A. Dwight Doggett, Sr. and that at the time he mixed the feed he was then about the business of A. Dwight Doggett, Sr. and within the scope of his employment and any negligence on his part is chargeable to the plaintiff, A. Dwight Doggett, Sr.

Manley
#
EEB
3-16-79.

The Court instructs the jury that when defendant Southern States Cooperative, Inc. delivered the Problend feed supplement to Farmers Service Company for sale to the public, defendant Southern States Cooperative, Inc. warranted that it was wholesome and fit for the ordinary purposes for which such feed supplement is used; and if you believe from a preponderance of the evidence at the time the product was so delivered to Farmers Service Company that the product was not wholesome and fit for the ordinary purposes for which such feed supplement is used, then defendant Southern States Cooperative, Inc. failed to comply with its warranty; and if you further believe from such evidence that any such failure was the sole proximate cause of the death and injury to plaintiff's cattle, then you shall find your verdict in favor of plaintiff A. Dwight Doggett.

Granted #2
EEB
3-16-79

The Court instructs the jury that a manufacturer who places a product in the stream of commerce warrants that the product is reasonably safe for the ordinary purposes of its intended use; and if you believe from a preponderance of the evidence that the plaintiff used the Problend feed supplement in the manner intended for its use and that it was unreasonably DANGEROUS for that use when it was delivered in Richmond, VA. to defendant Farmers Service Company and that the plaintiff's cattle were killed and injured as a result of that use, then you shall find your verdict in favor of plaintiff A. Dwight Doggett.

Granted #3
EEB
3-16-79

The Court instructs the jury that when a product is purchased by its trade or brand name, the law implies a warranty of merchantability or of fitness for the ordinary or general purposes for which the product is sold. If you believe from a preponderance of the evidence that defendant Farmers Service Company breached such implied warranty and that any such breach was the sole proximate cause of the death and injury to plaintiff's cattle, then you shall find your verdict in favor of plaintiff A. Dwight Doggett.

Granted
#4
EEB
3-16-79

No._____

The Court instructs the jury that if you find your verdict in favor of plaintiff, then in addition to the damages which you award, you may provide for interest on any principal sum awarded, or any part thereof, and fix the period at which the interest shall commence.

Granted #5
EEB
3-16-79

The Court instructs the jury that the term "preponderance of the evidence" does not necessarily mean the greater number of witnesses, but means the greater weight of all the evidence. It is that evidence which is most convincing and satisfactory to the minds of the jury. The testimony of one witness in whom the jury has confidence may constitute a preponderance.

Granted
#6
EEB
EEB

No. _____

The Court instructs the jury that the burden is on the plaintiff to prove by a preponderance of the evidence that the Thimet that killed the plaintiff's cattle was in the bag of ProBlend 50 when it left the possession of the defendant, Farmers Service Company, and if upon the whole evidence you are in doubt as to whether Thimet was in the bag when it left the possession of the defendant, or if it appears equally as probable that the Thimet was not in the bag when it left the possession of the defendant as that it was, then you shall find your verdict in favor of the defendant, Farmers Service Company.

Granted #7
EEB
3-16-79

No. _____

The Court instructs the jury that the burden is on the plaintiff to prove by a preponderance of the evidence that the Thimet that killed the plaintiff's cattle was in the bag of ProBlend 50 when it left the possession of the defendant, Southern States Cooperative, Inc., and if upon the whole evidence you are in doubt as to whether Thimet was in the bag when it left the possession of the defendant, of if it appears equally as probable that the Thimet was not in the bag when it left the possession of the defendant as that it was, then you shall find your verdict in favor of the defendant, Southern States Cooperative, Inc.

Granted 8th
EEB
3-16-79

INSTRUCTION NO._____

The Court instructs the jury that the defendant, Southern States Cooperative, impliedly warranted to all who purchased its ProBlend 50 that this product was fit for the ordinary purposes for which such goods are used. To recover under this warranty theory, the plaintiff must show two things: (1) That the goods were unreasonably dangerous [redacted] for the use to which they would ordinarily be put [redacted]; and (2) that the unreasonably dangerous condition existed when the goods left the defendant's plant. Therefore, unless you believe by a preponderance of the evidence that an unreasonably dangerous condition, if any, existed when the goods left the defendant's plant, you will find your verdict for the defendant.

#9
Granted
EEB
3-16-79

No. _____

The Court instructs the jury that the defendant, Farmers Service Company, impliedly warranted to all who purchased its ProBlend 50 that this product was fit for the ordinary purposes for which such goods are used. To recover under this warranty theory, the plaintiff must show two things: (1) That the goods were unreasonably dangerous [redacted] for the use to which they would ordinarily be put; and (2) that the unreasonably dangerous condition existed when the goods left the defendant's place of business. Therefore, unless you believe by a preponderance of the evidence that an unreasonably dangerous condition, if any, existed when the goods left the defendant's place of business, you will find your verdict for the defendant, Farmers Service Company.

Granted
#10
EEB
3-16-79

INSTRUCTION NO._____

The Court instructs the jury that a verdict must not be based in whole or in part upon surmise, conjecture or sympathy for either of the parties, but must be based solely upon the evidence and the instructions of the Court.

We, the jury, on the issues joined, find in favor of the plaintiff against Farmers Service Company and Southern States Cooperative, Incorporated, and assess his damages at $24,135.00 and interest on $ 24,135.00 from Jan. 10, 1978 (day, month, year).

Peggy W. Wolfe
Foreman

We, the jury, on the issue joined, find in favor of the defendants, Farmers Service Company and Southern States Cooperative, Incorporated.

Foreman

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT

March 16, 1979

DOGGETT, A DWIGHT, Plaintiff

vs

FARMERS SERVICE COMPANY and
SOUTHERN STATES COOPERATIVE, INCORPORATED, Defendants

FINAL ORDER CASE NO. 3216

This day came the parties in person and by counsel, and the defendants having heretofore filed their grounds of defense herein, issue is joined.

Whereupon came a jury, to-wit: Peggy W. Wolfe, Lillian G. Pierce, Eunice C. Harrell, Brenda R. Story, Michael L. Blythe, Thomas I Queen, and Paul L. Newby, who were sworn to well and truly try the issue joined and a true verdict give according to the evidence and the law.

The evidence of the plaintiff was presented and at the conclusion thereof the defendants by counsel moved to strike the evidence of the plaintiff on grounds stated in the record, which motion was overruled and to which ruling of the Court counsel for the defendants excepted.

Thereupon, the evidence of the defendants was presented and at the conclusion of all of the evidence, the defendants by counsel renewed their motion to strike the palintiff's evidence, on the same grounds, which motion was overruled and to which ruling of the Court counsel for the defendants excepted.

After receiving instructions from the Court and hearing arguments of counsel, the jury retired to their room to consult of their verdict

and after some time returned into Court with the following verdict:

> "We, the jury, on the issues joined, find in favor of the plaintiff against Farmers Service Company and Southern States Cooperative, Incorporated, and assess his damages at $24,135.00 and interest on $24,135.00 from January 10, 1978.
>
> (signed) Peggy W. Wolfe Foreman

The defendants by counsel, moved to set aside the verdict as being contrary to the law and evidence and to order a new trial, which motion was taken under advisement by the Court.

And this matter is continued to allow the attorneys for the defendants to prepare briefs and cite arguments why the verdict of the jury should be set aside and for response by the attorney for the plaintiff.

//

Judge

O R D E R

This matter came this day to be heard on the papers formerly read, upon the Order entered March 16, 1979, and upon defendants' motions to set aside the jury verdict as being contrary to the law and the evidence and to enter summary judgment in their favor or, in the alternative, to order a new trial on all issues, plaintiff and defendants appearing by counsel and on written briefs, and was argued by counsel.

In consideration whereof, and it appearing that the defendants' motions are without merit, it is

ORDERED that the defendants' motions are overruled and that final judgment upon the jury verdict is entered.

It is further ORDERED by the Court that the transcript of these proceedings which has been tendered shall be made a part of and incorporated as a part of the record this date.

Enter this 15 day of May, 1979.

Everett H. Bagnell
Judge

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUL 20 1979
RICHMOND, VIRGINIA

A COPY.

TESTE: W. E. Laine, Jr., Clerk

By: Sharon N. Jones, D. C.

I ask for this:

Counsel for Plaintiff

Seen, objected to and excepted to:

Of Counsel for Defendant, Farmers Service Company

Of Counsel for Defendant, Southern States Cooperative, Incorporated

NOTICE OF APPEAL

TO: William E. Laine, Jr., Clerk
Circuit Court of Isle of Wight County

Counsel for Southern States Cooperative, Incorporated, defendant in the above-styled matter in the Circuit Court for Isle of Wight County, hereby files Notice of Appeal from the Order entered herein on the 15th day of May, 1979, said Order having been entered in the Circuit Court of Isle of Wight County, Virginia.

The aforesaid Order, dated the 15th day of May, 1979, made a part of the record the transcript previously filed. No other transcript or statement of facts, testimony, or other incidents of the case is to be hereafter filed.

SOUTHERN STATES COOPERATIVE, INCORPORATED

By _____
Of Counsel

William M. Harris
Taylor, Gustin, Harris, Fears & Davis, P. C.
5735 Poplar Hall Drive
Norfolk, Virginia 23502

VIRGINIA: IN THE CLERK'S OFFICE OF
THE COUNTY OF ISLE OF WIGHT.
May 21 19 79
RECEIVED AND FILED
W.E. Laine Jr. CLERK
Sharon N. Jones D.C.

I hereby certify that a true copy of this Notice of Appeal was mailed this 18 day of May, 1979, to Thomas L. Woodward, Jr., 153 East Washington Street, Suffolk, Virginia 23434, counsel of record for the plaintiff A. Dwight Doggett, and to Rodham T. Delk, Jr., of Delk and Barlow, 229 Main Street, Smithfield, Virginia 23430, counsel of record for defendant Farmers Service Company.

NOTICE OF APPEAL

TO: W. E. Laine, Jr., Clerk

Defendant in the above styled case, Farmers Service Company, by counsel, hereby gives notice of appeal from the order entered herein on the 15th., day of May, 1979.

The transcript of the proceedings at trial have been made a part of the record by the order above mentioned, dated the 15th, day of May, 1979. No other transcript or statement is to be hereafter filed.

FARMERS SERVICE COMPANY

By W Parker Councill
Of Counsel

W. Parker Councill
Delk and Barlow
229 Main Street
Smithfield, Virginia, 23430

VIRGINIA: IN THE CLERK'S OFFICE OF THE COUNTY OF ISLE OF WIGHT.
May 23 20 79
RECEIVED AND FILED
W E Laine Jr. CLERK
Sharon N Jones, D. C.

CERTIFICATE

I hereby certify that a signed copy of the foregoing notice was mailed to Thomas L. Woodward, Jr., Esquire, 153 East Washington Street, Suffolk, Virginia, 23434, counsel for plaintiff, and to William M. Harris, Esquire, Taylor, Gustin, Harris, Fears & Davis, P. O. Box 12756, Norfolk, Virginia, 23502, counsel for the defendant, Southern States Cooperative, Incorporated, this 23rd day of May, 1979.

W Parker Councill

THE WITNESS: That is it.

THE COURT: All right, sheriff. Cut the lights on.

Now, the jury may go back to the jury box, please.

BY MR. WOODWARD:

Q A copy of your report, Doctor.

A All right, thank you.

Q You are Dr. Ryland B. Edwards?

A Yes, sir.

Q Dr. Edwards, where do you live?

A Smithfield, Virginia.

Q Where do you work?

A In Smithfield, in the County of Isle of Wight and surrounding areas.

Q And what type of doctor are you?

A Doctor of veterinary medicine.

Q As such, Doctor, how long have you been so engaged in the practice?

A Since 1962.

Q Dr. Edwards, what is your educational background in veterinary science?

MR. HARRIS: We certainly stipulate Dr. Edwards' qualifications as a veterinarian.

PENGAD CO., BAYONNE, N.J. 07002 · FORM 740

THE COURT: Unless you want to further qualify, the defense has stipulated that Dr. Edwards is an expert in veterinary.

BY MR. WOODWARD:

Q Doctor, in your practice of veterinary science, did you have occasion to go to the farm, the property of the plaintiff in this case, A. Dwight Doggett, on January 9, 1978?

A Yes, sir.

Q What did you find when you arrived at the farm?

A Well, it was at dark when I arrived. We had several cattle that were already dead and then had several that were in various stages of showing symptoms of approaching death. Then others that appeared to be normal at that particular time.

Do you want me to just go ahead with the story?

Q If you would tell, Doctor, what you found there at the scene and what the physical condition was of those not dead and those dying and what symptoms you did observe of those?

A Well, at the time we could find about a dozen, maybe 20 cattle, some of them were already dead and others were down and in prostrate positions. They were showing various signs that -- of course, a lot of things run through

your mind when you see this type of situation and try to determind by asking them questions what had been given the cattle as far as feed and so forth is concerned and then attempt to unravel out the mysteries of the symptoms to determine exactly what the cause of the condition was.

At that particular time I was not aware that that many cattle were involved. I don't think any of us were because it was dark and so forth at that particular time. I thought we had something along the -- what we call enterotoxemia or something associated with overeating of a particular ration that they were on.

Q. That would not be a poison type of situation?

A. Well, a toxemia from the overproduction of bacteria type of toxicants in the body.

Q. Did a number of things run through your mind at that time as a possible diagnosis of the ailment?

A. They did. As I indicated in the letter, and, of course, considered poisoning at that time, but due to the history and after talking to the owner and so forth that night, it kind of pushed that in the back of my mind at that particular time.

Q. Did you notice what symptoms the cattle exhibited, Doctor? I believe in the second paragraph of your letter there.

A. Yes. There was extreme salivation and they had

1 uncoordination and the movie indicated there were some tremors
2 of the muscle groups. A couple of them went down suddenly
3 like they were in extreme pain.
4 Of course, there was rotating of the eye itself to
5 indicate central nervous system type disturbance. The gait
6 was exaggerated, of course, and several of them went down in
7 view of us when we were examining the animals and they had
8 pedalling motions of the limbs.
9 Of course, a couple of them died while we were there
10 trying to treat the animals at that particular time.
11 Q What treatment did you prescribe and was
12 accomplished as to those that were still in a position to be
13 saved?
14 A We attempted to treat with -- since I was at
15 that particular time thinking that we were treating a gastro-
16 intestinal type overfeeding situation, we treated accordingly
17 with some intravenous steroids to make the animal feel better,
18 some intestinal emollients, something to soothe the intestinal
19 tract, and, of course, antibiotics as a precautionary type
20 of thing.
21 Q Did you suggest to Mr. Doggett that the feed
22 which had been used be terminated?
23 A Yes, sir. We talked about the feed, the fact,
24 I believe, that they had at that particular time had themselves,
25 but, anyway, we terminated the feed and then the next thing

we did, of course, was to autopsy one of the animals there at the place that the death occurred.

Q. Dr. Edwards, did you subsequently receive from the Division of Consolidated Laboratories of the Commonwealth of Virginia a report concerning certain samples which had been taken from feed and so forth from Mr. Doggett's farm?

A. I received copies of this report, but I think there was duplication of the samples sent in as far as the feed was concerned, so I think that my reports that I received were copies that had been sent to Mr. Doggett and to Herbert Jones, and I guess, since there was a duplication of samples, possibly one group, you know, got discarded. I really don't know. This is something that I couldn't answer in that respect.

Q. Did you read those reports which you received?

A. Yes, sir.

Q. Based upon the report which you read and based upon the physical examination of the animal, as a veterinarian, are you able at this time to express an opinion with reasonable medical certainty as to the source of the death and the injury caused to the cattle on Mr. Doggett's farm?

MR. HARRIS: Wait a minute. Your Honor please, I object to this type of question. I don't think he has laid the groundwork for an opinion at this time from Dr. Edwards based on some report that was received

PENGAD CO., BAYONNE, N.J. 07002 · FORM 740

1 from the state.

2 THE COURT: Well, he'd have to obviously tie

3 the report in.

4 MR. HARRIS: I would object at this time.

5 MR. WOODWARD: Well, the evidence is going to

6 be introduced, Your Honor. I was trying to accommodate

7 Dr. Edwards so he does not have to remain all day. All

8 counsel have had the reports for months now.

9 MR. HARRIS: I object to it at this time, sir.

10 THE COURT: Mr. Woodward, I expect you'll have

11 to lay a foundation for it if that is the way he wants

12 to proceed.

13 MR. WOODWARD: That is the way he is going to

14 insist on doing it, then Doctor, I am sorry.

15 MR. HARRIS: Well --

16 THE COURT: All right. You want to call another

17 witness at this time?

18 MR. WOODWARD: I suppose I'll have to. I would

19 ask that Dr. Edwards return to his practice and I'll

20 have to call him later, Your Honor, to say that the

21 report will be introduced through the state chemist.

22 My intent was to accommodate him.

23 THE COURT: How long is it going to be that you

24 will need Dr. Edwards?

25 MR. WOODWARD: I don't know.

1 MR. HARRIS: Can we have two minutes? It
2 might be that we can resolve this without that.
3 THE COURT: All right.
4 (Discussion off the record.)
5 MR. HARRIS: May I confer with Mr. Woodward
6 just a moment?
7 THE COURT: Yes, sir.
8 (Discussion off the record.)
9 MR. HARRIS: I think we can go ahead and
10 finish.
11 THE COURT: You withdraw your objection?
12 MR. HARRIS: Yes, sir.
13 THE COURT: Go ahead, Mr. Woodward.
14
15 BY MR. WOODWARD:
16 Q Dr. Edwards, you have indicated that you did
17 receive a report of certain chemical tests which were
18 performed by the Division of Consolidated Laboratories service
19 in Richmond, or a copy of that, and without going into what
20 that report specifically says, my question to you again is
21 based upon the information provided you in that report as to
22 chemical tests, further based upon your examination and
23 treatment of the animals there at Mr. Doggett's farm, are you
24 able to state with reasonable medical certainty your opinion
25 as to the cause of the death and the injury to Mr. Doggett's

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1 cattle?

2 A. Yes, sir.

3 Q. What is that opinion, Dr. Edwards?

4 A. I grouped it into an organic phosphate poisoning

5 type of situation. This was after the autopsy on the cattle

6 that night plus the symptoms that were indicated to me after

7 examining the cattle that night plus the report and also

8 observed the animals the next day that were still showing

9 some signs, the ones that lived.

10 Q. That is your opinion?

11 A. Yes, sir.

12 MR. WOODWARD: Answer these gentlemen, please.

13 THE COURT: Gentlemen, any questions of this

14 witness?

15 MR. DELK: I have no questions, Your Honor.

16 THE COURT: Do you need this witness any

17 further, Mr. Woodward?

18 MR. WOODWARD: No, Your Honor.

19 THE COURT: Gentlemen, do you need this witness

20 any further?

21 MR. HARRIS: No, sir.

22 THE COURT: Doctor, you are free to go. Thank

23 you for coming.

24 (Witness was excused.)

25 THE COURT: Call your next witness, Mr. Woodward.

1 You gentlemen indicated with reference to the
2 movie, you wanted that as an Exhibit. Do you want it
3 as an Exhibit or not?
4 MR. WOODWARD: Your Honor, it has been shown.
5 I would ask that it be made an Exhibit, of course,
6 with the right to have it reproduced at our expense
7 so that Dr. Edwards can have the original of it.
8 THE COURT: Any problem with that?
9 MR. HARRIS: No, sir, we have no objection
10 to it being withdrawn at this time.
11 THE COURT: Gentlemen, for the record, the
12 relevant parts of the movie which are relevant to this
13 case -- for the record, the movie does contain some
14 other films, shootings of other sites which are not
15 related, but the relevant part shown to the jury will
16 be admitted as Plaintiff's Exhibit No. 1. The plaintiff
17 is going to furnish the court a copy of that if required.
18 (Movie film was received in evidence and marked
19 as Plaintiff's Exhibit No. 1.)
20 MR. WOODWARD: I call as an adverse witness,
21 Your Honor, Mr. Jon Boling with Farmers Service Company.
22 THE COURT: Mr. Boling, sheriff.
23 MR. DELK: He is here.
24 MR. WOODWARD: As indicated, Your Honor, I do
25 call him as an adverse witness.

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1 MR. DELK: Your Honor, may I approach the bench?

2 THE COURT: With reference to the adverse

3 witness question?

4 MR. DELK: Yes, sir.

5 THE COURT: All right.

6 (Attorneys approached the bench and a side bar

7 conference was held out of the hearing of the court

8 reporter.)

9 THE COURT: I'll rule that way and note your

10 exception for the record.

11 MR. DELK: Your Honor, for the record, I would

12 have objection to this witness being qualified as an

13 adverse or hostile witness in this case merely on the

14 grounds that he is an officer of the defendant corporation

15 which I think is not sufficient to qualify him under the

16 law as a hostile witness.

17 THE COURT: All right. I am going to allow him

18 to be called as an adverse witness by the plaintiff in

19 this case since he is a defendant in the case.

20 MR. DELK: Please note my exception.

21 MR. WOODWARD: I didn't call him as a hostile

22 witness. I called him as an adverse witness. His

23 interest is, because of the nature of the case, adverse.

24

25 JON N. BOLING, called as an adverse witness on behalf

of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (adverse)

BY MR. WOODWARD:

Q You are Mr. Jon Boling?

A Correct.

Q Mr. Boling, where do you live?

A Smithfield, Virginia.

Q Where is your place of business?

A In Smithfield.

Q What type of occupation do you have there?

A I am president of Farmers Service Company.

Q Are you also a stockholder of that company?

A Yes.

Q Generally, what type of business is Farmers Service Company engaged in?

A In seed, feed and fertilizer, farmers' supplies.

Q Do you sell a variety of seed and farmers' supplies according to manufacturer?

A That is correct.

Q Are you the local Southern States dealer?

A That is correct.

Q Do you handle their products?

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1 A. I do.

2 Q. In selling that product, do you sell a substance,
3 feed supplement, as I understand it, Pro-Blend 50?

4 A. I do sell Pro-Blend 50.

5 MR. WOODWARD: Any objection?

6 MR. HARRIS: (Shaking head negatively.)

7

8 BY MR. WOODWARD:

9 Q. Mr. Boling, I show you a photocopy of a statement
10 from Farmers Service Company to a man named A. Dwight Doggett
11 and ask you what that is an order from or for and if it is,
12 in fact, from your corporation?

13 A. This is from Farmers Service on the 11th. One
14 ton of Pro-Blend 50, which is 20 bags.

15 Q. That is on December 11, 1977?

16 A. That is right. There is also two bags of TM-10,
17 which is an additive.

18 MR. WOODWARD: I was going to ask to introduce
19 these Exhibits together, Your Honor.

20

21 BY MR. WOODWARD:

22 Q. Secondly, I show you a statement, again another
23 photocopy, dated December 22, 1977, and ask you what that
24 shows?

25 A. This would be another ton of Pro-Blend 50.

1 Q Again, 20 bags?

2 A 20 bags.

3 Q 20 100 pound bags? Is A. D. Doggett, A. Dwight

4 Doggett here?

5 A Yes, sir.

6 Q He received those from your corporation?

7 A He did.

8 Q And duly paid for them?

9 A Right.

10 Q All right, sir.

11 MR. WOODWARD: We would ask that these be

12 introduced concurrently, Your Honor. I believe we

13 premarked certain Exhibits.

14 THE COURT: This will come in as Plaintiff's

15 Exhibit No. 3, gentlemen, these two orders from

16 Southern States. We have another Exhibit which has

17 already been agreed upon by counsel which will be

18 Exhibit No. 2.

19 (Plaintiff's Exhibit No. 2 was reserved for

20 an item to be later marked.)

21 (Order dated December 11, 1977, for one ton

22 of Pro-Blend 50 and order dated December 22, 1977,

23 for one ton of Pro-Blend 50 were received in evidence

24 and marked as Plaintiff's Exhibit No. 3.)

25 THE COURT: All right, Mr. Woodward.

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BY MR. WOODWARD:

Q. Now, Mr. Boling, is Southern States Cooperative, from your own experience with them and your knowledge in your industry, a large manufacturer and supplier of feed, seeds and other products for the farm?

A. I would say that in a four-state area.

Q. In a four-state area? And Pro-Blend 50, which you had referred to, comes to you bagged, does it not?

A. Yes, sir, it does.

Q. In 100 pound bags?

A. That is right.

Q. And you retail it in 100 pound bags?

A. That is correct.

Q. Do you have anything to do with it or do you receive it and merely sell it?

A. We receive it and sell it. Possibly store it for a period of time, a week or two weeks, something like that.

Q. Pro-Blend is a term that Southern States has? It is their brand name, is it not?

A. That is correct.

Q. Do you know what Pro-Blend consists of, generally?

A. Protein.

Q. And it is a feed supplement?

A. A feed supplement.

1 Q. Is Pro-Blend advertised by Southern States?

2 A. Yes.

3 Q. Sold by brand name?

4 A. Yes.

5 Q. Bought by brand name?

6 A. Yes.

7 Q. You advertise, also, Farmers Service Company?

8 A. Yes.

9 Q. You hold yourself out to the public as selling

10 certain products and advertise those products?

11 A. That is correct.

12 Q. Does Farmers Service Company stand behind what

13 it sells, Mr. Boling?

14 A. Yes.

15 Q. So if something is not what it should be, then

16 you do stand behind it?

17 A. If there is something that is wrong.

18 MR. WOODWARD: That is all I have at this time.

19 Thank you, Mr. Boling.

20 THE COURT: Any questions of Mr. Boling,

21 gentlemen?

22 MR. DELK: Your Honor, we may put him back on

23 at another time, but at this point I have no questions.

24 Mr. Harris does.

25 MR. HARRIS: Just one question, if you will, sir.

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1 CROSS-EXAMINATION

2

3 BY MR. HARRIS:

4 Q The Pro-Blend that you get from Southern States,
5 I believe, you go to Richmond to pick up, is that right?

6 A That is correct.

7 Q Where is that mill located?

8 A It is on Hall Street in Richmond.

9 Q You send your truck there to pick up the
10 Pro-Blend or what other --

11 A Right.

12 Q -- food products?

13 A We usually go to the mill once a week. That is
14 the only -- we do go directly to the mill and back.

15 MR. HARRIS: All right, sir.

16 THE COURT: That is all. Thank you.

17 MR. WOODWARD: I'd like to inquire of him
18 further from there.

19

20 REDIRECT EXAMINATION

21

22 BY MR. WOODWARD:

23 Q Mr. Boling, after this incident with Mr. Doggett's
24 cattle occurred, you don't question that 66 head of cattle
25 died, do you?

1 A. No, sir.

2 Q. And they were poisoned?

3 MR. HARRIS: Well, I think that would call for

4 an opinion of his, Your Honor.

5 THE COURT: Unless he has actual knowledge of

6 it, Mr. Woodward, I don't think he is in position to

7 testify.

8 MR. HARRIS: He only knows what he heard.

9

10 BY MR. WOODWARD:

11 Q. Mr. Boling, did you have some conversations with

12 Mr. Doggett after this unfortunate incident?

13 A. Yes, sir, I did.

14 Q. You had some conversations with his son?

15 A. Yes, sir, I did.

16 Q. You have received, have you not, the same reports

17 from the state chemists that everybody else has received?

18 A. Yes, sir.

19 Q. And you have read those reports?

20 A. Yes, sir.

21 Q. You are further aware that the Pro-Blend bag

22 with the residue in it was sent to Richmond?

23 A. Yes, sir.

24 Q. And that that was tested there?

25 A. Yes, sir.

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1 Q The test showed Phorate poisoning in it, did
2 it not?
3 MR. HARRIS: Wait a minute.
4 THE COURT: You have an objection?
5 MR. HARRIS: Yes, sir.
6 MR. DELK: I object. Both of us do.
7 Mr. Boling is not an expert either as to chemistry
8 or veterinary medicine or otherwise.
9 THE COURT: He didn't ask him any comments
10 of an expert.
11 MR. WOODWARD: I asked him what comment the
12 report indicated at this point.
13 MR. HARRIS: I don't think we will, but we may
14 object to the report. We don't want to go into it in
15 this manner.
16 MR. WOODWARD: I am merely laying the foundation.
17
18 BY MR. WOODWARD:
19 Q Mr. Boling, after you had all the information
20 available to you, and including the test results of the
21 Pro-Blend bag with the residue in it, after that, did you not
22 tell Mr. Doggett that you would see that things were made
23 right?
24 MR. HARRIS: Well now --
25

1 BY MR. WOODWARD:

2 Q. All right.

3 A. I went to -- do you want me to answer that?

4 Q. Yes, sir.

5 A. I went to Mr. Doggett because I was upset over

6 what had happened. I said I would do everything humanly

7 possible to straighten this problem out because he had been

8 a good customer and a friend.

9 Q. And you stated your continued willingness to

10 do that, have you not?

11 A. I would have done it for anybody.

12 Q. Has Southern States been cooperative with you?

13 MR. HARRIS: Well now, what are we talking

14 about here?

15 THE COURT: You have an objection, gentlemen?

16 MR. HARRIS: I object, Your Honor.

17 THE COURT: State your objection, the reason

18 why, gentlemen, if you would.

19 MR. HARRIS: Southern States been cooperative

20 with him? I object to that.

21 THE COURT: I don't know that that is relevant

22 or material to the issue.

23 MR. WOODWARD: The question that I'm asking,

24 he has indicated to us that he told Mr. Doggett he

25 wanted to see that the right thing was done. I wanted

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1 to ask him about his conversations with Southern
2 States and their representatives.
3 MR. HARRIS: Objection.
4 THE COURT: Well, as to whether or not they
5 had been cooperative with this gentleman is not relevant
6 to this proceeding and I'll sustain that objection.
7 MR. WOODWARD: My question is not directed
8 towards cooperation, Your Honor. What I am seeking
9 through this gentleman is an admission or statement
10 against interest, statement by Southern States against
11 their interest.
12 MR. HARRIS: Well, Your Honor --
13 THE COURT: If there is one.
14 MR. HARRIS: Not against Southern States, not
15 through him.
16 MR. WOODWARD: Certainly.
17 THE COURT: Admission against interest made by
18 Southern States can come through this witness, yes, sir.
19 MR. HARRIS: Objection.
20 THE COURT: If there is one made.
21
22 BY MR. WOODWARD:
23 Q Mr. Boling, I understand you are a Southern
24 States dealer. I'm not trying to put you in the middle,
25 but my question to you, sir, is this: did you not and have

1 you not called Southern States and had conversations with
2 them about Mr. Doggett's claim for the dead cattle?
3 MR. HARRIS: By who? Wait a minute.
4 THE COURT: I think he has got to qualify
5 who, Mr. Woodward, and what position they held.
6
7 BY MR. WOODWARD:
8 Q Have you had any conversations with any people
9 in Southern States in Richmond about Mr. Doggett's claim
10 about the loss of the cattle?
11 A Yes. I notified them of the problem.
12 Q Have you spoken with them by telephone since
13 that time about this?
14 A Yes.
15 Q With whom did you speak there?
16 A I spoke with the feed representative,
17 Tom Kirkpatrick, and I spoke with the -- hum -- legal counsel
18 for Southern States. You know, I couldn't name every name,
19 but a couple of different people at Southern States to make
20 them aware of what the happenings were that happened in
21 Smithfield concerning this case.
22 Q And even though the law may look to you,
23 Mr. Boling, in fact you feel and felt that it was Southern
24 States' problem, did you not?
25 MR. HARRIS: Wait a minute. Hold on, sir.

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1 Objection.

2 THE COURT: What he felt is not material,

3 Mr. Woodward. You stated that you were going to ask

4 him a question with reference to a statement that --

5 MR. WOODWARD: I am.

6 THE COURT: Well, let's get to it.

7 MR. WOODWARD: All right.

8 THE COURT: You are arguing the point.

9

10 BY MR. WOODWARD:

11 Q My question, Mr. Boling, is this: in the

12 conversations that you had with Southern States, did you not

13 request them to satisfy Mr. Doggett's claim?

14 MR. HARRIS: Objection.

15 THE COURT: Sustained, sustained. Don't

16 answer the question.

17

18 BY MR. WOODWARD:

19 Q Did they?

20 MR. HARRIS: Why don't we go ahead and prove

21 the case, Mr. Woodward? Ask him specific questions.

22 I object to this generalization.

23 THE COURT: I sustain the objection so far.

24

25 BY MR. WOODWARD:

1 Q Did they make any statements to you about their
2 responsibility?
3 MR. HARRIS: Objection to this.
4
5 BY MR. WOODWARD:
6 Q Representatives of Southern States Cooperative,
7 Incorporated, in Richmond, Virginia, as referred to in your
8 statement.
9 MR. HARRIS: Objection.
10 MR. WOODWARD: I think he understands what
11 I am asking.
12 MR. HARRIS: I object. No, sir.
13 THE COURT: You can ask him what Mr. Kirkpatrick
14 said. He is a representative stated. If it was a
15 declaration against interest --
16 MR. HARRIS: I don't think a mere agent of a
17 corporation --
18 MR. WOODWARD: I never --
19 MR. HARRIS: -- no declaration against interest
20 for the corporation.
21 MR. WOODWARD: I never heard a corporation say
22 a word yet, Your Honor. People speak; not corporations.
23 MR. HARRIS: Officers.
24 THE COURT: I'll allow any statements made by
25 Mr. Kirkpatrick with reference to this food, gentlemen.

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1 BY MR. WOODWARD:

2 Q Did Mr. Kirkpatrick make any statements to you,

3 Mr. Boling --

4 MR. HARRIS: Objection.

5

6 BY MR. WOODWARD:

7 Q -- about their responsibility?

8 MR. HARRIS: Objection.

9

10 BY MR. WOODWARD:

11 Q All right.

12 A Mr. Kirkpatrick was at the feed mill. I went

13 up there to try and determine the problem at the feed mill.

14 The statement that he made is that poison could not have

15 come from the feed mill.

16 MR. HARRIS: I didn't understand that, sir.

17 THE WITNESS: That poison could not have come

18 from the feed mill.

19 MR. HARRIS: That is what Mr. Kirkpatrick told

20 you?

21 THE WITNESS: Yes, sir.

22

23 BY MR. WOODWARD:

24 Q So they have not accepted responsibility? Is

25 that your answer?

A. That is correct.

Q. None of their conversations -- meaning the employees or representatives of Southern States --

A. Right.

Q. Is that correct?

A. Correct.

MR. WOODWARD: I have no further questions. Thank you, Mr. Boling.

THE COURT: Do you have any further questions, gentlemen?

MR. DELK: Your Honor, I may call him later as one of our witnesses, but I don't have any questions at this time.

THE COURT: You can step down. Thank you, Mr. Boling.

(Witness was excused.)

THE COURT: Next witness.

MR. WOODWARD: I call A. Dwight Doggett, Jr..

A. DWIGHT DOGGETT, JR., called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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BY MR. WOODWARD:

Q You are A. Dwight Doggett, Jr.?

A Yes.

Q Mr. Doggett, where do you live?

A Route 3, Smithfield.

Q What type of business are you engaged in?

A Farms.

Q How old are you?

A Thirty.

Q How long have you been engaged in farming?

A Since 1971; eight years.

Q Were you raised on the farm?

A Yes, sir.

Q What sort of educational background do you have?

A A B.S. degree from the University of Richmond.

Q Mr. Doggett, I direct your attention to January 7, 1978, and January 9, 1978. During that period of time, who on your father's farm engaged in the feeding of the cattle which he had?

A I ground all the feed and filled up the feeders. My brother and the man that works feed silage.

Q As far as the use of the feed mill itself, who of all of you on the farm was engaged in that particular job?

A I was.

Q. Was anyone else connected with that particular feeding operation?

A. No.

Q. Mr. Doggett, the farm where you prepared the feed to be fed on another farm, where is that farm located?

A. Route 258.

Q. Where is that in relation to where we are right now?

A. A quarter of a mile.

Q. On that particular farm are there certain buildings and outbuildings and machinery used in the farming operation?

A. Yes.

Q. I hand you a photograph marked Plaintiff's Exhibit No. 2 and ask you if you would look at that and please identify it for us?

A. It is a picture of the feed mill I used to grind feed with.

Q. Is this the feed mill that you were using on January 7th and 9th, 1978?

A. Yes, sir.

Q. What is the capacity of that feed mill?

A. Three ton capacity. 6000 pounds.

Q. At that time and now, what actually goes into it? On January 7th, what went in the feed mill and on January 9th

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1 before it was actually given to the cattle? In other words,
2 what were the component parts of the feed mill?
3 A. Three components. Corn, supplement and peanut
4 vines.
5 Q. The corn which you used, how much of that three
6 tons, approximately, was corn?
7 A. One-half of the bulk of the mill.
8 Q. That would have been a ton and a half?
9 A. Yes, sir.
10 Q. Three thousand pounds, roughly?
11 A. Yes.
12 Q. What other components went into it?
13 A. Two bags of Pro-Blend 50 supplement.
14 Q. Is that manufactured by Southern States?
15 A. Yes.
16 Q. What type of bag does it come in?
17 A. Plastic bags.
18 Q. How much weight per bag?
19 A. 100 pounds per bag.
20 Q. You indicated that you used two of those.
21 A. Yes, sir.
22 Q. What else did you use?
23 A. The balance of the bulk of peanut vines.
24 Q. What type of peanut vines were they?
25 A. Baled vines; baled on the farm.

1 Q When had they been baled?

2 A The fall of that year; the fall of the previous

3 year.

4 Q '77?

5 A That is correct.

6 MR. WOODWARD: Your Honor, these photographs

7 have been seen by counsel previously. Do you-all

8 want to see them again?

9 MR. HARRIS: I'm not a farm boy myself, and

10 I didn't know what they were, so if you'd let me look

11 at them as we go along.

12 THE COURT: Mr. Harris has indicated he wants

13 to look at them as you go along.

14 MR. DELK: You are going to --

15 MR. HARRIS: You are going to put them all in

16 now?

17 MR. WOODWARD: Yes, sir.

18 MR. HARRIS: Why don't you.

19 THE COURT: You are going to pass them to the

20 jury?

21 MR. WOODWARD: Yes, sir. I thought counsel

22 was familiar with them.

23 THE COURT: You may pass them to the first one.

24 (Photographs were received in evidence and

25 marked as Plaintiff's Exhibits Numbers 2-A through 2-M.)

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1 BY MR. WOODWARD:

2 Q. This photograph here again of the feed mill,

3 Mr. Doggett?

4 A. Yes.

5 Q. I hand you Plaintiff's Exhibit No. 3 -- 2-A,

6 excuse me. Plaintiff's Exhibit No. 2-A and I ask you what

7 that is a photograph of.

8 A. The same feed mill; just a different view.

9 It is showing the relation of the parts that -- the parts

10 that the feed goes in.

11 Q. Could you step down here, if you would, for a

12 moment? We have some other photographs of parts of it.

13 Just for the benefit of the jury, at this point if you'd hold

14 it like that. What is this part here that I am referring to

15 which appears to the rear?

16 A. All right. This is where the supplement is

17 entered into the feed mill here.

18 Q. Is that the Pro-Blend 50 that you referred to?

19 A. That is correct. Under here, and it augers in

20 this part here, mixed in this part here. This part here with

21 the lid up is where the corn enters in.

22 This long thing right here folds down and peanut vines

23 enter in here and ultimately are mixed in this part right

24 here.

25 Q. Are all the components ultimately mixed in the

1 large bin area?

2 A. Yes, sir, they are.

3 Q. I hand you Plaintiff's Exhibit No. 2-B, Mr.

4 Doggett, and ask you to step down again, please, sir, and

5 tell us what that shows there.

6 A. This is the same feed mill with that long

7 elevator folded down so that the vines can enter in.

8 Q. Are they pulled on up by this conveyor belt

9 into the system?

10 A. Into a chopper right here.

11 Q. If you'll stand right here, please. All right.

12 I show you Plaintiff's Exhibit No. 2-C and ask you what that

13 is a photograph of?

14 A. That is a front photograph of the entrance for

15 the corn with the lid up.

16 Q. I hand you Plaintiff's Exhibit No. 2-D and I

17 ask you what that is a photograph of?

18 A. That is a photograph looking down into the rear

19 hopper where the supplement enters.

20 Q. Now, the supplement which goes in there, how

21 do you get the supplement into the hopper?

22 A. With six 100 pound bags. Just pour it in.

23 Q. Pour it into that?

24 A. Yes.

25 Q. I hand you Plaintiff's Exhibit No. 2-E and ask

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1 you what that is a photograph of?

2 A. That is a photo showing this mill sitting here

3 under the auger where the corn is taken in. This auger

4 over to the right is bringing corn into the mill.

5 Q. Does it bring it in along this pipe and then

6 drop it into the mill itself?

7 A. That is correct.

8 Q. Is this the particular situation as far as the

9 production that was in effect in January of '78?

10 A. Same situation.

11 Q. Is that the standard procedure which was

12 followed on your farm?

13 A. Yes.

14 Q. I show you a photograph marked Plaintiff's

15 Exhibit No. 2-F and ask you what that is a picture of?

16 A. That is the front of the barn where the supplement

17 is held and the center section.

18 Q. Now, the center section that you referred to,

19 if you put your finger on it and show the center section?

20 A. Here with the open door.

21 Q. Now, I notice there is a bag shown in this

22 particular photograph. On January 7, 1978, how were the bags

23 of Pro-Blend stored in this particular center section that

24 you have called it?

25 A. In the same manner. Sitting right next to the

door.

Q. Were the bags stacked?

A. Standing up like this bag.

Q. Standing like this bag? What is this a view of? I hand you Plaintiff's Exhibit No. 2-G, I believe it is.

A. The same door with just a closer shot of the bags.

Q. I hand you Plaintiff's Exhibit No. 2-H and ask you what that depicts?

A. That shows the tractor and the feed mill backed in this barn door in preparation of entering supplement.

Q. Was the corn introduced before the supplement?

A. That is correct.

Q. Where are the corn bins that you have shown us in the photograph in relation to this barn?

A. Directly next to it. It is shown on one of these photographs.

Q. It is next to the barn that we referred to?

A. Yes.

Q. Now, after you introduced the corn into the feed mill, would you then place your tractor in position as shown here, next to the barn?

A. That is right.

Q. Tell the jury, if you would, specifically what you would do with it? I believe you mentioned two bags of

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1 Pro-Blend 50 were used in these feedings.

2 MR. HARRIS: Mr. Woodward, you keep asking what

3 he would do. I assume you are asking him what he did

4 on this specific occasion.

5 MR. WOODWARD: That is precisely what I am asking.

6 MR. HARRIS: All right.

7

8 BY MR. WOODWARD:

9 Q Mr. Doggett --

10 A Backed the mill to this barn door. Take the

11 two bags of Pro-Blend 50 from the barn and put them into the

12 mill. You dump them right into the rear auger that is shown

13 on one of those.

14 Q I notice there is a step here. When you got

15 the Pro-Blend 50, would you go into the barn area or would you

16 be on the ground?

17 A Sometimes you'd go in and sometimes you'd go

18 on the ground. Depends on how far in the barn the bags were.

19 Q Where would you be or where were you on January

20 7th when you removed or opened the tops of the bags?

21 A Standing on the ground.

22 Q Is that open air there?

23 A Yes.

24 Q Tell us precisely, if you would, and show us

25 what you would do with the bags of Pro-Blend? How did you

open the bags of Pro-Blend on January 7th?

A. There is a tape on the top. You just grab one end of the tape and it opens the top. It loosens the threading on the top.

Q. Is it sealed before that?

A. Yes.

Q. What did you then do with the two bags?

A. Poured them into the hopper.

Q. Wait a minute; we have some more. I show you Plaintiff's Exhibit No. 2 and I ask you what that depicts.

A. It is a closeup of the same photo we just saw.

Q. I show you Photograph 2-J and ask you what that shows?

A. That is a picture of the barn where the peanut vines are stored that I was using at that particular time.

Q. Where is that particular barn located?

A. Hum -- the road past the school bus garage, approximately half a mile from my father's house.

Q. Where is that in relation to where the cattle were on January 9th?

A. They were approximately half a mile further up that road.

Q. Let me show your Plaintiff's Exhibit 2-K and ask you what that shows?

A. That shows the first feeder I placed the feed mill

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on the morning of January 9th.

Q. Where is that feeder located?

A. On the Nelms farm about a mile from my father's home.

Q. Now, how does the mixture of the feed get into this particular feeder? What do you do to put it in there?

A. It is augered in directly from the mixing tank to the feeder.

Q. Does the top of the feeder come up?

A. Yes.

Q. All right.

A. The hinges just open.

Q. The hinges that open?

A. Yes.

Q. And you put it in through the opening at the top there?

A. Yes.

Q. I hand you another photograph marked Plaintiff's Exhibit No. 2-L and ask you what that shows?

A. That shows the two feeders in the front feed lot at the Nelms farm where you place feed in this feeder closest to the photographer here in this photograph.

Q. Was that on January 9th?

A. January 9th.

Q. Is this feeder here closer to the road than is

the first feeder shown in the photograph?

A. Yes.

Q. Mr. Doggett, I show you final photograph, Plaintiff's Exhibit No. 2-M, which is two photographs which make a panoramic view and ask you what this photograph shows?

A. It shows the relation of the bin where the corn was held and the barn where supplement was being held.

Q. Does it also show the remainder of the back portion of your father's farm?

A. That is correct.

Q. Is this behind his house?

A. Behind and to the left going from the highway.

Q. You can take a seat back up there, Mr. Doggett. Mr. Doggett, did you feed the cattle on January 7, 1978?

A. Yes.

Q. Was that on Saturday?

A. That is right.

Q. After you had completed that particular feeding, what did you do?

A. I returned to the farm or to my father's home and placed the corn back in the feed mill to half capacity of the mixing tank, put two bags of supplement in the rear hopper and then drove the feed mill and parked it under an open shelter.

Q. Is that open shelter in the same general area

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as these other buildings?

A. Directly behind those buildings in the final photograph.

Q. Was anything else put in on January 7th other than the half volume of corn and the Pro-Blend supplement?

A. No.

Q. Was there any feeding done on January 8, 1978, which would have been a Sunday?

A. No.

Q. Did you usually feed every day or how many days a week on the average would you feed?

A. Five or six days a week.

Q. On January 9, 1978, which would have been Monday, what did you do as far as feeding the cattle?

A. I went and got the same tractor and feed mill out from under this open shelter and drove it to the location of the vines, put in approximately 20 bales of peanut vines to fill the mixing tank up and then drove on from the feed lot to where the feeders were located.

Q. Had the tractor or the feed mill been tampered with in any way --

MR. HARRIS: Objection.

BY MR. WOODWARD:

Q. -- that you could see?

1 MR. HARRIS: Objection.

2 THE COURT: I think he can testify, Mr. Harris,

3 to what he could observe.

4 MR. HARRIS: Assuming that he had observed the

5 feed mill all during the weekend.

6 THE COURT: Well, I think --

7 MR. HARRIS: I assume that is your question.

8 His question is directed at that weekend.

9 MR. WOODWARD: I'm just asking him did it

10 appear that the feed mill had been tampered with.

11 MR. HARRIS: From when to when?

12 MR. WOODWARD: From the time he had seen it on

13 January 7th to the morning on January 9th.

14 MR. HARRIS: Did it appear that it had been

15 tampered with?

16 MR. WOODWARD: That is what my question is.

17 I am trying to just --

18 MR. HARRIS: I don't think it is a proper

19 question.

20 THE COURT: I see no problem with the question.

21 MR. HARRIS: Oh, no, that is all right.

22

23 BY MR. WOODWARD:

24 Q Did it appear that it had been tampered with in

25 any way?

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1 A. No.

2 Q. Any indication to you directly or indirectly that

3 anybody had introduced anything in the feed mill since you

4 had last seen it on January 7th?

5 A. No, sir.

6 Q. Now, what time did you start the process on

7 January 9th, Monday?

8 A. Around 7:30.

9 Q. So you got the tractor?

10 A. And continued on, got the peanut vines.

11 Q. Did you put the vines in? Did you put them on

12 that conveyor belt type thing?

13 A. Yes, sir.

14 Q. After you had done that, put the peanut vines in,

15 does the entire mill continue to auger, to mix what is in

16 there?

17 A. It mixes even while you are traveling down the

18 highway.

19 Q. Did you go anywhere after you put the peanut

20 vines in other than to the feeders?

21 A. (Witness shaking head negatively.)

22 Q. Approximately how much of the mixture did you

23 put in the first feeder that you referred to in the photograph?

24 A. Hum -- about approximately a fifty -- fifty

25 100 pound sacks.

1 Q. That was in the first feeder?

2 A. That is right.

3 Q. How much of the total would that have been?

4 A. Hum -- 80%.

5 Q. All right.

6 A. That was what was in that mill.

7 Q. What did you do with the remainder?

8 A. Put it in the first -- hum -- feeder on my way

9 out in the front lot.

10 Q. Was the feed mill then, for all intents and

11 purposes, empty?

12 A. Yes, sir.

13 Q. What did you do when you got back to your father's

14 farm?

15 A. Filled the mill back up again with half corn and

16 went to the barn and got two more bags of supplement and put

17 them in the mill; then parked it back under the shelter again.

18 Q. Now, on January 9, 1978, after you had completed

19 the feeding process, what did you do then?

20 A. I went to work on a tenant house.

21 Q. Was anyone with you?

22 A. My brother and the man that works with us.

23 Q. What was the first notice or indication you had

24 that something was wrong with the cattle?

25 A. That afternoon my father came up and told us

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1 there was something wrong with the cattle over there and we
2 had better come over with him and see what we could do and
3 what the problem was.
4 Q What did you do when you got to where the cattle
5 were?
6 A We saw that some were dying and some were in
7 distress, so the first thing we did was run them all off the
8 feeders and shut them away from any more feed.
9 Q Dr. Edwards subsequently came to the scene?
10 A Yes.
11 Q Do you know how many cattle totally died in this
12 particular incident?
13 A 66.
14 Q Now, after it happened, Mr. Doggett, did you
15 have occasion to take any samples from any of the feed what-
16 ever on your father's farm?
17 A The following morning, January 10th, I took
18 samples of the feed in three feeders and of the corn in the
19 bins that I was grinding from and also in another bin where
20 we hadn't used any corn from.
21 Q So you took five samples?
22 A That is right.
23 Q What did you do with those samples?
24 A Took them to Ivor to the regional laboratories.
25 Q Is that a part of the state laboratory system?

A. Yes.

Q. Did you know at that time what had caused the death of the cattle?

A. No, sir.

Q. After the report of the chemist was received, what steps did you and your brother, Albert Jones and your dad take toward getting your situation such that you could feed again using the same feeder, feed mill?

A. You mean the report of the chemist saying what the cause of the death of the animals was?

Q. Right after you received that, what did you do about cleansing or decontaminating your equipment?

A. Well, we received a process from the -- I think Princeton University whereby we cleansed the feed mill with dehydrated lime and Clorox.

Q. During the interim between your receiving the report and your decontamination, how were the cattle fed and what were they fed?

A. We were feeding silage and hay.

Q. For my benefit, what is silage?

A. It is chopped stalks of corn with the grain chopped in it.

Q. Did you use any feed meal in that process?

A. No.

Q. After your feed mill was decontaminated, did you

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1 go back to feeding the cattle in the same way as you did on
2 January 7th and 9th, 1978?
3 A. After we got the report back from this chemist
4 that gave us the process and the mill was all right to use,
5 we went back to using it.
6 Q. Mr. Doggett, after you opened the bag of
7 Pro-Blend 50, you told us that you dumped it in. What did
8 you do with the empty bag then?
9 A. Threw it back in the barn.
10 Q. Where was it in the barn?
11 A. To the right of the door.
12 Q. Was it just lying on the floor?
13 A. Yes, sir.
14 Q. Were there a number of bags in there?
15 A. Half a dozen.
16 Q. Were they Pro-Blend 50 bags, clearly marked as
17 Pro-Blend 50?
18 A. They had tags saying Pro-Blend 50.
19 Q. Did they show Southern States on them, also?
20 A. Yes.
21 Q. Did you introduce any Phorate poisoning into
22 your father's feed mill?
23 A. Not to my knowledge, no.
24 Q. Would you have done such as that?
25 A. No.

1 MR. WOODWARD: Answer these gentlemen.

2

3 CROSS-EXAMINATION

4

5 BY MR. DELK:

6 Q Do you know what Phorate smells like?

7 A I know what Phorate -- Thimet is.

8 Q Can you describe the odor?

9 A Hum -- I would describe it as strong and --

10 hum -- offensive.

11 Q It is readily recognizable?

12 A Yes.

13 Q Is it an odor like anything else that you

14 encounter on your farm?

15 A No, sir.

16 Q From any other chemicals that you may use on

17 your farm?

18 A It has a distinct odor.

19 Q It doesn't take much of a quantity of this

20 material to produce that odor, does it?

21 A No.

22 Q Did you come into contact with the bag that had

23 a residue of this material in it?

24 A I never recognized it as being.

25 Q Did you come into contact with a bag that had

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1 that odor?

2 A. Not that I could detect, no.

3 Q. Have you smelled this, detected this odor on

4 the farm within a week before this incident and a week after

5 this incident?

6 A. No.

7 Q. Have you ever used a Phorate material on your

8 farm?

9 A. Yes.

10 Q. What brand name was that?

11 A. Thimet.

12 Q. Who manufactures Thimet?

13 A. I don't know.

14 Q. Is it manufactured by Southern States?

15 MR. WOODWARD: He doesn't know. He can't

16 tell you who manufactured it.

17

18 BY MR. DELK:

19 Q. It is not manufactured, to your knowledge, by

20 Southern States, is it?

21 A. No, sir.

22 Q. When I say "you", I am speaking of the -- we'll

23 call it the Doggett farming operation that operates the

24 farming operation that you and your father and your brother

25 were engaged in.

1 Where did you purchase Thimet from?

2 A. Different places. The Thimet we usually

3 purchased from either Prescription Fertilizer Company in

4 Ivor or Farmers Service in Smithfield.

5 Q. You are not sure where?

6 A. Well, I hadn't used it in a good long time.

7 Q. When is the last time that you recall using it

8 prior to the incident on January 9?

9 A. Hum -- soy beans in the spring of 1976, I think.

10 Q. What is Thimet used for?

11 A. It is an insecticide. It is placed under the

12 seed to keep insects from destroying the seed.

13 Q. Is it later applied to the plant after the seed

14 is germinated?

15 A. It may be, but it is not, to my knowledge.

16 Q. Is that the only use you have ever made of

17 Thimet on the Doggett farm?

18 A. Yes.

19 Q. Has Thimet ever been used for rodent control --

20 A. Yes.

21 Q. -- on the Doggett farm?

22 A. Yes.

23 Q. How was it used for rodent control?

24 A. Placed in a burrow so that when the rat goes

25 through, they get it on their feet and lick it off, and when

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1 they drink water it would kill them then.

2 Q. It is an effective rat killer, isn't it?

3 A. Yes.

4 Q. When do you recall last using it for rodent

5 control on your farm?

6 A. Hum -- I haven't used it -- I mean, I don't

7 think I've used it. I think my father used it three or four

8 years ago.

9 Q. Do you know if anybody else has used it?

10 A. No, I don't.

11 Q. Who has access to Thimet on your farm? Is it

12 locked up?

13 A. Oh, no, it is not locked.

14 Q. How many people work on the farming operation?

15 A. One man other than our family.

16 Q. Would that be your father, you, your brother,

17 Mike?

18 A. Right.

19 Q. And who is the other man?

20 A. Albert Jones.

21 Q. All of you enter and have access to all of the

22 farm buildings at any time during the day?

23 A. Yes.

24 Q. Or night?

25 A. Yes.

1 Q. Was there Thimet on your farm on January 9, 1978?
2 A. Yes.
3 Q. Where was it located?
4 A. In a shelter -- hum -- in a workshop; in the
5 rear of a workshop.
6 Q. How much quantity was on the farm?
7 A. I believe -- hum -- one bag. Whatever the
8 weight of that is, 10 or 15 pounds.
9 Q. Thimet is sold in 20 pound bags, three to the
10 case, isn't it?
11 A. If you say so.
12 Q. I'm asking you is it?
13 A. I don't know.
14 Q. It weighs more than 10 pounds per bag?
15 A. I don't know; whatever is in a bag, that is
16 what was there.
17 Q. Was it an open bag or a closed bag?
18 A. Closed bag.
19 Q. Have there been other bags in addition to that
20 on the farm?
21 A. You mean prior to January the 9th?
22 Q. Yes.
23 A. Yes, we have used it. The spring before, '76.
24 Q. Where were the empty containers?
25 A. They were thrown away or either burned up.

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1 Q Were there any other empty containers on the
2 farm on January 9th?
3 A Yes, there was later found one in the feed barn.
4 Q Now, when you say feed barn you are referring to
5 the framed building where the Pro-Blend and other supplement
6 was stored, is that correct?
7 A That is correct.
8 Q And that is the frame building shown in Exhibit
9 2-E?
10 A That is right.
11 Q 2-F?
12 A Right.
13 Q 2-G?
14 A Yes.
15 Q 2-H?
16 A Yes.
17 Q 2-I?
18 A Yes.
19 THE COURT: I think you have sufficiently
20 identified the building. Let's go on.
21 MR. WOODWARD: We'll concede it is the same
22 building.
23
24 BY MR. DELK:
25 Q What are the dimensions of that building?

1 A. 20 by 30.

2 Q. 20 feet by 30 feet?

3 A. That is correct.

4 Q. Where was the empty Thimet box found in that

5 building? Where was it located in the building?

6 A. In the rear right corner.

7 Q. Where was the Pro-Blend stored in that building?

8 A. In the front left corner.

9 Q. How much would you say that is apart?

10 A. 30 feet.

11 Q. When was the Thimet box discovered?

12 A. I believe Mr. William Simmons or either Herbert

13 Jones found it there when we were going through the barn

14 looking for a possible cause.

15 Q. Was this an empty Thimet bag or a box?

16 A. A box.

17 Q. When you purchase Thimet, you purchase it in --

18 there is more than one bag? Three bags to the box, are there

19 not?

20 A. It is in a box and the bags are contained in the

21 box.

22 Q. Do you know how many bags?

23 A. I believe three.

24 Q. Where are the other bags?

25 A. Well --

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1 Q. You had one full bag of Thimet on the farm, is
2 that correct?
3 A. That is correct.
4 Q. And that had not been opened?
5 A. No.
6 Q. Where were the other two bags?
7 A. They had been destroyed and burned or thrown
8 away.
9 Q. Do you know that?
10 A. I throw all the bags away as we use them. We
11 either burn them up or throw them away as we use them.
12 Q. Now, Mr. Doggett, no one had any part in mixing
13 any of the cattle feed that was mixed on January 7th and
14 completed on January 9th?
15 A. No one but myself.
16 Q. On the usual occasions, but not necessarily with
17 regard to January the 9th, you would take a 100 pound bag of
18 Pro-Blend 50 and -- what is this bag constructed of?
19 A. Plastic. Light material.
20 Q. Is it like a plastic cloth? Is it a woven type
21 of cloth or is it solid plastic sheet?
22 A. No. It is woven cloth, I believe.
23 MR. WOODWARD: Is that like the one -- is that
24 like the Pro-Blend?
25 MR. DELK: Yes.

1 Your Honor, at this point, for identification
2 I would like to enter this as Defendants' Exhibit
3 No. 1.
4 THE COURT: You want it marked for identification?
5 MR. DELK: Yes, sir. I'll get him -- I was going
6 to introduce it.
7 THE COURT: Let's go ahead and let him identify
8 it.
9
10 BY MR. DELK:
11 Q Would you describe this, Mr. Doggett?
12 A That is just a common Southern States feed bag.
13 Q Is this similar to the type of bag in which
14 Pro-Blend 50 is purchased?
15 A Yes, sir.
16 Q Is this a 100 pound size bag?
17 A Yes.
18 Q Is this the manufacturer's name and material
19 as you recall the Pro-Blend 50 bags on your farm have been
20 constructed of?
21 A Same material.
22 Q How was this bag sealed?
23 A Sewn across the top approximately where this
24 black line is.
25 Q Folded over or doubled or simply sewn?

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1 A. I believe just simply sewn.

2 THE COURT: The Southern States bag will come

3 in as both defendants or which one?

4 MR. HARRIS: Both defendants.

5 THE COURT: Both defendants? All right.

6 This will come in.

7 MR. DELK: It is Mr. Harris's bag. I am

8 introducing it. I don't want to steal his bag.

9 THE COURT: This will come in as both defendants'

10 Exhibit No. 1; both Southern States and Farmers Service

11 Exhibit. I'll mark it as such, as both defendants',

12 because we have two.

13 (Southern States bag was received in evidence

14 and marked as joint Defendants' Exhibit No. 1.)

15

16 BY MR. DELK:

17 Q. When you opened the bag of Pro-Blend 50, I trust

18 you picked it up to dump it into the hopper on the mill, is

19 that correct?

20 A. Yes.

21 Q. Would you describe the consistency of Pro-Blend

22 50?

23 A. It has a -- it is a ground meal texture to it.

24 Q. When you pour it into the hopper -- how large

25 generally would you describe the opening on the hopper that

you poured into, the hopper on the mill that you poured the supplement into?

A. Two foot square.

Q. Did you dump the whole bag at one time or did you have to, more or less, gradually feed it into the hopper?

A. Just dump it all at once.

Q. It would hold 100 pounds?

A. With the auger running.

Q. Did it ever create dust or any of that? Did dust ever come up when you poured it into the hopper?

A. Sometimes.

Q. How about on January 7th?

A. I don't recall.

Q. But there could have been?

A. I would imagine so.

Q. There could have been creation of some dust?

A. Yes.

Q. What does Pro-Blend 50 smell like? Does it have an odor?

A. It smells just like any other feed. It is not a distinct odor.

Q. Do you detect the smell or the odor of Pro-Blend 50 when you are pouring it into the hopper of the mill?

A. You can, yes.

Q. Do you recall whether you detected it on January

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1 7th?

2 A. No.

3 Q. Did you smell any Thimet or Phorate when you

4 poured the Pro-Blend 50 into the hopper of the mill on

5 January 7, 1978?

6 A. No.

7 Q. In that feeding process, did you open two bags of

8 Pro-Blend 50 on January 7th?

9 A. Yes.

10 Q. On January 9th, after you finished feeding the

11 cattle, you returned back and then repeated that process, did

12 you not?

13 A. Yes.

14 Q. Did you detect any odor of Phorate at that time?

15 A. No.

16 Q. Did you detect any odor of Phorate or Thimet

17 when you were augering the final mixed feed from the feed mill

18 into the feeders at the feed lots?

19 A. No.

20 Q. How close do you stand to the feed mixer, the

21 mixing mill, when you begin to load or dump corn into it?

22 A. Hum -- anywhere from 10 to 25 or 30 feet.

23 Q. You are standing at the controls to the corn

24 auger?

25 A. No. You just plug it in and then you can walk

1 around, if you want to. There are windows you can watch it
2 fill up.
3 Q. Did you detect any odor of Thimet at that time?
4 A. No.
5 Q. Or the Phorate material?
6 A. No.
7 Q. Do you recall anyone other than your father using
8 Thimet for rodent control on the farm?
9 A. No.
10 Q. You have seen him do it?
11 A. Yes.
12 Q. Was he the only one who participated in rat
13 control or rodent control on the farm?
14 A. No.
15 Q. Is it possible that someone else could have also
16 used it for rodent control?
17 A. Yes.
18 Q. Where were the rat burrows that you attacked with
19 Thimet, we might say?
20 A. On the corn bin.
21 Q. Were there rat burrows around the barn where
22 you stored your supplement?
23 A. Not that we could put Thimet in. Not that we
24 could get close to to put Thimet in.
25 Q. Excuse me, I didn't hear.

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1 A. Not that we could get close enough to put in
2 Thimet.
3 Q. The rat was killed because it picked up this
4 Thimet material on its feet?
5 A. Yes.
6 Q. And it could carry it around with it in its
7 feet or its hair, is that correct?
8 A. It gets on its feet. It licks it feet to get
9 rid of it, of the Thimet, and then water causes it to die.
10 The intake of water.
11 Q. Do you use burlap bags on your farm for either
12 storage of -- do you use it for storage of feed?
13 A. Yes, sir.
14 Q. Where do you acquire burlap bags?
15 A. From feed stores, from used supplement bags.
16 Q. Did you have burlap bags in the same barn, the
17 feed barn where the supplement was stored?
18 A. Yes.
19 Q. What type of floor does the feed barn have?
20 Does it have a floor or is the feed stored on the ground?
21 A. Wooden floor.
22 Q. How old is the feed barn?
23 A. Fifty years old.
24 Q. Is there any straw stored in the feed barn?
25 A. No.

1 Q. Has there ever been any in there?

2 A. No.

3 Q. Have you ever seen rats or mice in the feed barn?

4 A. Yes.

5 Q. Did you see a rat or a mouse or rodent in the

6 vicinity of the feed barn within a month before January 7th

7 and a month after?

8 A. I don't recall.

9 Q. Do you know whether any of the state or other

10 officials who were investigating this incident discovered

11 rodents in the feed barn?

12 A. I do not know.

13 Q. It is probable that there were, at least around

14 the feed barn?

15 A. Yes, sir.

16 MR. WOODWARD: I object to what is probable.

17 THE COURT: I sustain the objection.

18

19 BY MR. DELK:

20 Q. Do you ever use other supplements in your cattle

21 feed?

22 A. Yes.

23 Q. What type of supplements?

24 A. You mean different brand names?

25 Q. Yes, sir.

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1 A. Hum -- Purina.

2 Q. Well, do you ever use Terraycin in your cattle

3 feed?

4 A. Yes, sir.

5 Q. What does that look like?

6 A. It has a greenish color. Much the same

7 consistency as as regular supplement.

8 Q. What size bags does that come in?

9 A. 50 pounds.

10 Q. You buy that mixed in a salt, don't you? Is

11 that TM-10?

12 A. You can, yes.

13 Q. Trace mineral salt, do you ever use that?

14 A. Yes, sir.

15 Q. What is trace mineral salt?

16 A. Salt combined with trace minerals.

17 Q. What color is that?

18 A. Red.

19 Q. Livestock mineral supplement? Do you ever use

20 that?

21 A. Hum -- yes.

22 Q. How do you purchase that?

23 A. Hum -- 50 pound bags, I believe.

24 Q. What color is that?

25 A. Gray or brown.

1 Q. Do you ever mix these in with the Pro-Blend and
2 the hay or straw?
3 A. Yes.
4 Q. Did you do this on -- where are they kept?
5 A. In the -- hum -- supplement barn there.
6 Q. Did you have any on hand on January 7th?
7 A. No.
8 Q. You had no other supplement other than Pro-Blend?
9 A. No.
10 Q. When did you have them last on hand before
11 January 7th?
12 A. Sometime during the month of December.
13 Q. What happened to the TM-10 that you purchased
14 in December at the same time that you purchased the Pro-Blend?
15 A. I used it all.
16 Q. Did you use any of these supplements or
17 materials on January 7th when you mixed the feed?
18 A. No.
19 Q. On January 9th when you remixed the feed after
20 feeding the cattle?
21 A. No.
22 MR. DELK: That is all I have, Your Honor.
23 THE COURT: Do you have any questions,
24 Mr. Harris?
25 MR. HARRIS: Yes, sir.

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1 THE COURT: Is your examination going to be
2 long?
3 MR. HARRIS: Judge, I was going to mention,
4 I would say so.
5 THE COURT: Gentlemen, this would be a good
6 time for us to break for lunch. Now, since we do
7 have a right good ways to travel to be able to eat,
8 for the benefit of those folks out of town, I'm going
9 to reconvene about 2:15. We'll recess until 2:15.
10 Now, ladies and gentlemen of the jury, I want
11 you to be thinking about this. I'll get an answer
12 from you when you get back for you to check on your
13 situation. Obviously, this case is going to take
14 some time with the witnesses that we have and the
15 complexity of the case. I don't know whether Judge
16 Williams or Judge Godwin talked to you originally or
17 not, but we usually try to quit around 5:30, but it
18 would be the Court's desire, if it is agreeable with
19 you folks, to continue on somewhat later than that in
20 this particular case today. I want to try to finish
21 this case in two days if possible, so you folks go
22 home and think about getting your affairs in order.
23 If possible, the Court does want to continue on
24 possibly somewhat later than 5:30. It may be at least
25 until 6:30 and possibly 7:00 if it is agreeable with

1 you folks, so eat a good lunch.

2 If you can, I'd like to continue on at least

3 that long tonight, but if that is not agreeable with

4 you folks, if any of you have to quit at 5:30, I can

5 accommodate you tomorrow. All right.

6 MR. WOODWARD: Might make the statement, Mr.

7 Dwight Doggett, Jr., he has an extremely bad tooth.

8 He is supposed to see the dentist or call him at 1:30.

9 THE COURT: I understand Mr. Doggett's problem.

10 Maybe he can get in and get back, but it is five after

11 one. His examination may take a good period of time.

12 I think we ought to break for lunch.

13 MR. WOODWARD: I was just asking that he be able

14 to call his dentist.

15 THE COURT: Certainly. Excuse the jurors.

16 Ladies and gentlemen of the jury, remember my

17 instructions about discussing the case, deliberating

18 among yourselves while you are at recess. Try to get

19 started here at 2:15.

20 Sheriff, excuse the witnesses and advise them

21 that we will reconvene at 2:15.

22 The Court stands adjourned until that time.

23 (A luncheon recess was taken, after which the

24 trial continued as follows:)

25

AFTERNOON SESSION

(The witness resumed the stand.)

BY MR. HARRIS:

Q Mr. Doggett, in addition to being a college graduate, you have been involved in farming for quite sometime, right?

A Yes, sir.

Q You yourself knew the danger of Thimet?

A Yes, sir.

Q If the least bit of it gets in the cattle food, you know that there is a danger that it could spread to all the cattle --

A Yes.

Q -- if they eat it, and that it takes very little of it to do that damage?

A Yes.

Q You have known that for quite sometime?

A Yes. I didn't know the degree that -- I didn't know the strength of it, but I knew it was strong.

Q Had you read anything in regard to Thimet?

A Hum -- the label of the container.

Q There are warnings on there, are there not?

A Yes.

1 Q American Cyanamid makes that, isn't that right?
2 A I don't --
3 Q Makes Thimet?
4 A I don't know.
5 Q Would you describe as best you could the odor
6 of Thimet?
7 A Hum -- strong, offensive.
8 Q Strong and offensive?
9 A Yes.
10 Q Does it smell like anything you have ever smelled
11 before?
12 A No.
13 Q Is it the type of thing that it comes to you
14 and you smell it you would have to turn your head?
15 A You would want to, yes.
16 Q On that Saturday morning when you were mixing
17 the Pro-Blend, you had to reach down and open a 100 pound bag
18 of Pro-Blend, right?
19 A Yes.
20 Q Then you lift it? You have to lift it over this
21 rear hopper and pour it in?
22 A Yes, sir.
23 Q I take it that lifting a 100 pound bag you would
24 get it at least somewhere close to your nose?
25 A Hum -- about waist high.

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1 Q About waist high?

2 A. Yes.

3 Q Then you have to put it over into the hopper and

4 let the 100 pounds just fall in the hopper, right?

5 A. Yes.

6 Q And that creates some dust?

7 A. Yes.

8 Q What were weather conditions that morning, do

9 you recall?

10 A. No, I don't.

11 Q As far as you know -- excuse me. Was it raining

12 or snowing or anything like that?

13 A. I don't know.

14 Q At that time that you emptied those two bags of

15 Pro-Blend into the hopper, with your head right over that

16 hopper, you did not smell this offensive Thimet, did you?

17 A. No.

18 Q Then when you had finished mixing that with the

19 corn -- let me ask you this: while you were there and knowing

20 the mixer that you have that augers the Pro-Blend up into the

21 corn, does it --

22 A. It augers from the rear of the mill to the center

23 of that large chamber and then it is taken up in it.

24 Q That is done while you are standing there?

25 A. Yes.

1 Q. And while you are going down the highway?

2 A. Yes. That is all done while you are there.

3 Q. While all of that was going on, did you smell

4 any Thimet?

5 A. Well, as soon as you dumped the last bag, you

6 shut the top and it is still going on up in there then.

7 Q. I see. But in any event, I think the answer

8 would be no?

9 A. No.

10 Q. Then do I understand that from Saturday morning

11 until Monday morning the mix stayed right there by the barn?

12 A. It stayed under the shelter. The mixer stayed

13 under the shelter.

14 Q. Could you show me on the photograph where it

15 stayed?

16 A. It is to the rear as you look at the large --

17 Q. All right.

18 A. The photograph there where the two bins are the

19 same size. You see sort of in the middle of the photograph

20 there.

21 Q. All right.

22 A. Here. It is right through here, behind the --

23 down the hill.

24 Q. Behind it and down the hill?

25 A. Yes. This is the top of the building here. This

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1 is all down the hill.

2 Q Now, where is your home?

3 A Over here.

4 Q Over here? So actually the mixing mill would be

5 behind those two railings there?

6 A Here is the driveway here that goes through here.

7 Q Well, did you have to -- actually, you put the

8 Pro-Blend over here, didn't you?

9 A Yes. You drive here and through this driveway.

10 Q Through this driveway and parked the mixer in

11 back of these tin or galvanized bins?

12 A Bins.

13 Q All right. During the few days that that mixer

14 stood there, did you have occasion to see it at any time?

15 A Well --

16 Q That would be all day Saturday, all day Sunday

17 and --

18 A I saw it in passing.

19 Q In passing?

20 A What do you mean, see it or inspect it?

21 Q First, did you see it?

22 A Yes.

23 Q Did you inspect it?

24 A No.

25 Q In passing, what do you mean? You went around

1 there to look at it or went around behind the bins to look
2 at it?
3 A. Well, each time you drive around the yard, you
4 can see it.
5 Q. But the house is over here?
6 A. Yes.
7 Q. Did you see it between the two?
8 A. To the right of where I pointed out the driveway
9 was.
10 Q. Does the farm have a fence around it?
11 A. Yes.
12 Q. Now, who would have access to -- strike that.
13 Exhibit 2-E, is that the bin that you dumped the
14 Pro-Blend in?
15 A. Yes.
16 Q. And as you pour that, this looks to be an auger
17 down at the bottom. Is that augering all the time?
18 A. Yes.
19 Q. You are creating more dust, right?
20 A. Yes.
21 Q. When you went back Monday morning to actually
22 feed the cattle, did you get anywhere near the bin -- I mean,
23 the food mixer?
24 A. I was near it when I was placing the peanut vines
25 in it.

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1 Q Is this a matter of putting the peanut vines in
2 the top of that mixer?
3 A No, on the fold-down part.
4 Q Conveyor?
5 A Yes.
6 Q Oh, I see. There was, I understand, a Thimet
7 box in the area where the Pro-Blend was stored.
8 A Yes.
9 Q And that had been there before this happened?
10 A Yes.
11 Q Was there not also a bag of Thimet in that area?
12 A No.
13 Q There was a bag of Thimet on the farm, was there?
14 A Yes.
15 Q Where was it?
16 A In a shop area.
17 Q Where is the shop area?
18 A Hum -- to the right of that driveway where I
19 showed you I drove the feed mill there.
20 Q Within how many yards would you say of the
21 Pro-Blend?
22 A 50 yards.
23 Q Has that bag of Thimet ever been found?
24 A Has it ever been found? Yes, we found it in
25 there.

1 Q. Sir?

2 A. We found it in there after, you know, when we

3 were looking for -- hum -- causes or whatever or looking to

4 see what chemicals were on the farm and whatnot.

5 Q. You found the bag of Thimet?

6 A. Yes, in the shop with the other chemicals.

7 Q. With the other chemicals?

8 A. Yes.

9 Q. Now, you had Thimet being used as, I believe you

10 told me, around the barn.

11 MR. WOODWARD: Objection to that, Your Honor.

12 He did not state that.

13

14 BY MR. HARRIS:

15 Q. Well, I'll ask you did you use Thimet, put it

16 in the holes around the barn?

17 A. No.

18 Q. You did not? But had you seen your father do it?

19 A. No, I had not.

20 Q. Had you seen Thimet used or put out by your

21 father?

22 A. Yes.

23 Q. In any area?

24 A. Yes.

25 Q. Where was that?

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1 A. Around corn bins.

2 Q. Around the corn bins?

3 A. Corn bins, yes, sir.

4 Q. Are they the same bins that you pointed out

5 to me?

6 A. Yes, sir.

7 Q. Where would rats usually get? Where did you

8 have the most trouble with rats or mice?

9 A. Corn bins.

10 Q. Would they get in the area where the Pro-Blend

11 was?

12 A. Yes.

13 Q. That was wide open, right?

14 A. Yes.

15 Q. But you didn't put any -- you never saw any

16 Thimet used around that?

17 A. No.

18 Q. Do you know why Thimet was not put there?

19 A. We didn't want it close to the food.

20 Q. Didn't want it close to the feed? It was all

21 right to have it close to the corn?

22 A. Well, it was under the bin.

23 Q. You have kept Thimet in the area where the

24 Pro-Blend was, haven't you?

25 A. Yes.

Q Wasn't there some loose Thimet in the Pro-Blend barn or where you kept the Pro-Blend after all this happened?

A. No.

Q. What was in there as far as Thimet is concerned?

A. As far as Thimet, an empty box.

Q. An empty box?

A. Yes.

Q. Did you check the empty box yourself?

A. I saw it after -- hum -- either Mr. Simmons or Mr. Jones found it.

Q. I intend to contradict you on this, but you did not see any loose Thimet at that time?

A. No, I did not.

Q. You are sure?

A. I did not.

Q. In the area where you emptied the Pro-Blend into the mixer -- let's put it this way: that is right close or next to the barn where you keep the Pro-Blend, right? You hauled a mixer over to that area?

A. Yes, back it right up to the door.

Q. Back it right up to get your Pro-Blend?

A. Yes.

Q. Right?

A. Yes.

Q. You went back to examine everything at the farm

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1 directly after the cows died? That would be the night of
2 January 9th, right, or early January 10th?
3 A. January the 10th.
4 Q. Okay. Were you looking for anything especially?
5 A. Any cause that would kill the cattle. Anything.
6 Q. When you were told by someone that it was Thimet
7 that had killed them, did you do a mopping up operation
8 around the barn?
9 A. Yes. Ultimately cleaned the whole barn out.
10 Q. The whole barn?
11 A. Threw everything out.
12 Q. The Pro-Blend 50 bags that were in this barn,
13 were there not about a dozen or so in there, if not more?
14 A. There probably were several hundred tied up
15 along the sides.
16 Q. Lying in the floor?
17 A. Lying in the floor, six to ten.
18 Q. Six to ten Pro-Blend bags lying around on the
19 floor?
20 A. Yes, sir.
21 Q. That is the way it was when you went back there?
22 A. Yes.
23 Q. Did you yourself examine any Pro-Blend bags
24 when you went back there on the morning of the 10th?
25 A. No.

1 Q When you began your mopping up operations, we'll
2 call them, you did clean out the barn where the Pro-Blend
3 was stored?
4 A Yes.
5 Q What did you use to put the trash in that you
6 got up?
7 A Put it all in a large, two-ton truck.
8 Q Did you put it in a bag?
9 A No, just put it in loosely because we had a
10 great deal of feed in there where we had to throw away and
11 we buried it all.
12 Q A great deal of feed where?
13 A In the rear of the truck.
14 Q But when you were actually inside that little
15 place where you stored the Pro-Blend, did you use a broom to
16 sweep up?
17 A Yes. I didn't do it, but my brother did. I
18 know he used the broom.
19 Q You didn't help do that?
20 A No, but I know who did it.
21 Q Did you do any of the mopping up or sweeping up?
22 A No.
23 Q Anywhere?
24 A Not in that barn, no.
25 Q Anywhere?

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1 A. Yes. I helped clean all the feeders out and the
2 feed mill.
3 Q. You do use Pro-Blend bags to store things in,
4 don't you?
5 A. Yes.
6 Q. And one of the things that you might use
7 Pro-Blend bags for to store things would be trash?
8 A. I never stored any in a Pro-Blend bag.
9 Q. What do you use Pro-Blend bags for?
10 A. To regrind feed to use in a bag form or we bag
11 our own feed in it and take it out in bags.
12 Q. You bag your own feed?
13 A. Yes.
14 Q. To feed your own cattle?
15 A. After we have already ground the supplement and
16 corn and whatnot.
17 Q. Then do these bags go back to where the Pro-Blend
18 is?
19 A. We have them in the barn beside us and we just
20 use them over and over.
21 Q. By that you mean the other room in the same area
22 where the Pro-Blend is?
23 A. Yes.
24 Q. A room right there beside that one?
25 A. Yes, sir.

1 Q So all of those bags are in there, too --
2 A Yes, sir.
3 Q -- that you previously used to rebag that?
4 A Yes.
5 Q Was it during the -- this happened on a Monday
6 night. When was it that you cleaned up? Was it the next
7 couple of days?
8 A A week later.
9 Q Not until after a week?
10 A That is right.
11 Q Well now, why is that? Why did you wait a week?
12 A Because we were waiting for the results to come
13 back. We didn't know what had killed the cattle; we didn't
14 change it. We didn't do any kind of feeding anything. We
15 ceased operations for that length of time.
16 Q Well, are you saying that you did not do any
17 work on the farm so far as cleaning up is concerned in a barn
18 or wherever until after a week?
19 A I buried cattle for three or four days.
20 Q I'm sorry.
21 A I was burying cattle for three or four days.
22 Q You were doing other things, weren't you?
23 A That is all I had time to do and hauling silage
24 to feed the cattle that we had left.
25 Q How was that being hauled? What was it in?

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1 A. In a truck in bulk.

2 Q. Any in Pro-Blend bags?

3 A. No.

4 Q. Did you also sell silage in Pro-Blend bags to

5 others?

6 A. I have never sold silage in it, no. You don't

7 sell.

8 Q. Has your father?

9 A. He never sold silage.

10 Q. How about soy beans?

11 A. We sold soy beans, not in bags, but in bulk.

12 Q. Do you bag anything in the Pro-Blend bags for

13 resale?

14 A. No.

15 Q. Have you ever?

16 A. No.

17 Q. All right.

18 A. Excuse me. I bagged rye; rye seed. We sold it

19 to a farmer.

20 MR. HARRIS: Thank you, Mr. Doggett.

21

22 REDIRECT EXAMINATION

23

24 BY MR. WOODWARD:

25 Q. Mr. Doggett, just several questions.

1 In the right rear, I believe you testified, the same
2 area in which the -- the left front, the Pro-Blend was bagged,
3 there was a Thimet box. Was Thimet itself ever actually in
4 the box or were bags inside the box?
5 A. There was no Thimet in it when we --
6 Q. The box itself?
7 A. Yes.
8 Q. Thimet, in fact, does not come in boxes? It
9 comes bagged in boxes, does it not?
10 A. Yes.
11 Q. Is Thimet widely used by farmers generally,
12 products similar to it?
13 A. Yes.
14 Q. Now, if you will step down here just a moment.
15 Referring to Plaintiff's Exhibit No. 2-M, if you will hold
16 that for me, please. This building here, the extreme left
17 of the photograph is what?
18 A. The feed barn, the supplement barn.
19 Q. Is that open door the one that we have been
20 referring to?
21 A. Yes.
22 Q. Where was the one bag of Thimet that you have
23 referred to?
24 A. In this building.
25 Q. In this building at the extreme right of the

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1 picture?

2 A. Yes.

3 Q. In the feeding operation did you have occasion

4 to go here and use any products in here whatsoever?

5 A. No.

6 Q. Now, the one bag of Thimet, was that there

7 before January 7, 1978?

8 A. Yes, sir.

9 Q. Was it there in the same condition after

10 January 7, 1978?

11 A. Yes.

12 Q. Mr. Harris has asked you on several occasions

13 about smelling or the odor of Thimet. Are you referring

14 there to the odor of undiluted Thimet?

15 A. Yes.

16 Q. Have you ever smelled, for example, 3 pounds

17 of Thimet and 97 pounds of Pro-Blend mixed?

18 A. No.

19 Q. You don't know whether that has an odor or not

20 then, do you?

21 A. No.

22 Q. Now, were you there the day Mr. Herbert Jones

23 came there inspecting the bags?

24 A. Yes.

25 Q. Was that the date that the inspector took one

of the bags and sent it over to Richmond?

A. Yes.

Q. Was that a Pro-Blend bag?

A. Yes.

Q. Did he smell the bag himself?

A. Yes.

Q. Did you, also?

A. Yes.

Q. Did you smell anything then?

A. No.

Q. When you-all did the cleaning up, you said about a week later, did you know at that time the source of the poison?

A. No.

Q. Did you learn that weeks later after the bags were examined?

A. Yes.

MR. WOODWARD: That is all I have.

Thank you, Mr. Doggett.

THE COURT: Just a second, Mr. Doggett.

Any further questions?

MR. DELK: I have none.

THE COURT: Mr. Harris?

MR. HARRIS: No.

THE COURT: You may step down, Mr. Doggett.

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1 You may go back to your witness room. Don't
2 discuss your testimony.
3 MR. WOODWARD: Your Honor, Mr. Doggett is
4 still having the tooth problem.
5 THE COURT: Do you want to excuse him?
6 MR. WOODWARD: I would ask that he be excused.
7 His dentist is still in Williamsburg and he is waiting
8 to see him. He is taking some medicine now.
9 THE COURT: Is he going to be available if
10 either party needs to get in touch with him?
11 MR. WOODWARD: Yes, sir.
12 THE COURT: Any objection on that?
13 MR. DELK: No.
14 MR. HARRIS: No.
15 (Witness was excused.)
16 THE COURT: Call Michael S. Doggett.
17 MR. WOODWARD: Michael S. Doggett.
18 THE COURT: Gentlemen, I ask counsel to
19 assist the Court. None of these witnesses are in
20 the courtroom?
21 MR. DELK: I have looked and I don't see any.
22 THE COURT: None of yours, Mr. Woodward?
23 MR. WOODWARD: No.
24
25 MICHAEL S. DOGGETT, called as a witness on behalf of

1 the plaintiff, having been first duly sworn, was examined
2 and testified as follows:
3
4 DIRECT EXAMINATION
5
6 BY MR. WOODWARD:
7 Q You are Michael S. Doggett?
8 A Yes, sir.
9 Q Michael, where do you live?
10 A I live at Route 3, Box 7381, Windsor.
11 Q How old are you?
12 A 26.
13 Q What type of work do you do?
14 A Farming.
15 Q How long have you been engaged in farming?
16 A Hum -- since 1975.
17 Q Were you raised on the farm?
18 A Yes, I was.
19 Q In January of 1978, were you involved in the
20 feeding operation of the cattle which involved the three ton
21 feed mill?
22 A No, I wasn't.
23 Q Who did that work at that time?
24 A My brother.
25 Q Did anyone assist him in doing that work?

1 A No, they didn't.

2 Q Mr. Doggett, do you know what Thimet is?

3 A Yes, I do.

4 Q Did you put any Thimet in the feed mill, the

5 three ton feed mill?

6 A No, I didn't.

7 MR. WOODWARD: Answer any questions of these

8 gentlemen.

9

10 CROSS-EXAMINATION

11

12 BY MR. DELK:

13 Q Have you ever used Thimet?

14 A Have I?

15 Q Yes.

16 A Yes, I have.

17 Q How have you come into contact with it?

18 A We have used it on soy beans, peanuts at

19 planting time.

20 Q What color is it?

21 A Hum -- kind of a grayish brown.

22 Q Do you recognize it when you see it?

23 A If it is in a bag or box.

24 Q If it is not in the package, do you recognize

25 it when you see it?

1 A. Hum -- by odor, yes.

2 Q. You may not recognize it when you see it, but

3 when you are around it you know that you are near it, don't

4 you?

5 A. Yes, sir.

6 Q. Because of the odor?

7 A. Yes.

8 Q. Describe to the jury -- can you relate the odor

9 of Thimet with anything else?

10 A. I would say it smelled -- I don't know, maybe

11 like wild onions.

12 Q. Doesn't smell like anything else on your farm,

13 does it?

14 A. Not that I -- some other chemicals smell like

15 other chemicals.

16 Q. Does it smell like anything else?

17 A. It smells like some other chemicals.

18 Q. Could you mistake it for some other chemical

19 if you smelled it?

20 A. You possibly could.

21 Q. What chemical?

22 A. Maybe affanate.

23 Q. It is not very pleasant to be around, is it?

24 A. No.

25 Q. Is it an overpowering sort of odor?

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1 A. Yes.

2 Q. Have you ever used Thimet for anything else

3 other than on crops? You just mentioned that you used it

4 on soy beans and peanuts.

5 A. No.

6 Q. Have you ever used it for rodent or rat control?

7 A. No, I haven't.

8 Q. Have you ever seen anyone else use it for rat

9 control?

10 A. Yes.

11 Q. Who?

12 A. I have seen my father use it.

13 Q. Where have you seen him use it?

14 A. Rodent burrows.

15 Q. Where?

16 A. Underground.

17 Q. Are there any buildings on the farm?

18 A. Yes, sir.

19 Q. What particular buildings?

20 A. I have seen him use it around grain bins.

21 Q. Any other buildings?

22 A. Storage, old storage houses, underneath fuel

23 tanks.

24 Q. How about the barn where the food supplement

25 was stored?

1 A. No, I haven't.

2 Q. Has anyone else used it on the farm for rat

3 control?

4 A. Not that I know of.

5 Q. When is the last time you have seen it used

6 for rat control?

7 A. Three or four years ago.

8 Q. Where was the Thimet stored?

9 A. On our farm?

10 Q. Yes.

11 A. We stored it in the grain bin down the hill back

12 behind, away from where we had the feed.

13 Q. Was it ever stored anywhere else?

14 A. Well, we always stored chemicals in one bin and

15 we took the chemicals out of that bin and stored them in a

16 workshop and put corn in it was the only time we had chemicals

17 stored anywhere else on the farm.

18 Q. How did the Thimet box get into the barn where

19 the food supplement was stored?

20 A. Well, years before our farm -- before I came out

21 to the farm ten years ago, chemicals were probably stored in

22 that barn before the bin was put up.

23 Q. Did you see the Thimet box in the barn where the

24 food supplement was stored?

25 A. Yes, I did.

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1 Q Do you know how long it had been there?
2 A I'd say it had been there probably at least --
3 I don't know, ten years.
4 Q Do you know how long it had been there?
5 A Do I know how long?
6 Q Are you sure it had been there ten years?
7 A I know it couldn't have been put there after that
8 or when the big bin was put up. No chemicals have been put
9 in that barn since then.
10 Q You cleaned up the barn where the food supplement
11 was stored after the incident on January 9th, is that right?
12 A Yes.
13 Q Did you sweep it out?
14 A Yes, I did.
15 Q When did you do that?
16 A Oh, I would say probably two weeks after it all
17 happened.
18 Q Two weeks later?
19 A Yes, probably.
20 Q What did you do with the materials that you
21 swept up?
22 A We carried them to the county dump to be buried.
23 Q Were you present when any officials from the
24 state Agriculture Department or the Product and Industrial
25 Regulations Department or county extension officials were at

1 your farm investigating?

2 A. Yes, I was.

3 Q. Were you present with them when they went into

4 and examined the storage barn where the food supplement was

5 stored?

6 A. On some occasions.

7 Q. Not on every occasion?

8 A. No.

9 MR. DELK: I have no further questions,

10 Your Honor.

11

12 EXAMINATION BY MR. REED:

13 Q. Mr. Doggett, you say that after the accident

14 you did not clean up the feed storage barn until two weeks?

15 A. Yes, sir. Well, it's been a -- approximately

16 after everybody had gone and looked and taken a test. I mean,

17 after they had gotten the results back. It was a good bit

18 of time and everybody had done all their looking and

19 researching.

20 Q. Were you with Mr. Herbert Jones when he found

21 the bag that was sent to the state laboratories?

22 A. Yes, I was.

23 Q. Did he pick that bag up out of the pile of bags?

24 A. Yes, he did.

25 Q. About how many bags would you say were in that

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1 pile?

2 A. Four bags, to the best of my -- think it was

3 four bags.

4 Q. Do you recall whether that bag was on the top,

5 bottom or middle?

6 A. No, I don't.

7 Q. You said that you have never or you generally

8 don't assist Dwight in the mixing.

9 A. No, I don't.

10 Q. You never do?

11 A. I do, but not that one, I did not.

12 Q. Well, after these two weeks had passed and you

13 finally went back to the feed storage barn to clean it up,

14 did you sweep?

15 A. Yes.

16 Q. What did you do with your sweepings?

17 A. Put them in the back of a truck and carried them

18 to the county dump to have them buried.

19 Q. How did you get them from the barn to the

20 truck? In a shovel?

21 A. With a shovel.

22 Q. You didn't put them in a bag?

23 A. No, I didn't.

24 MR. REED: That is all, Your Honor.

25 THE COURT: Anything further, Mr. Woodward?

1 MR. WOODWARD: No. You may step down.

2 THE COURT: Do you need this witness any

3 further, gentlemen?

4 MR. WOODWARD: No. I ask that he be excused.

5 He may be available further on request.

6 THE COURT: Anything further?

7 MR. HARRIS: He'll be available if necessary,

8 I take it?

9 THE COURT: He can leave the premises but he

10 can't remain in the courtroom. Of course, Mr. Doggett,

11 the witnesses were excluded.

12 Call your next witness, Mr. Woodward.

13 (Witness was excused.)

14 MR. WOODWARD: Call Albert Jones.

15

16 ALBERT W. JONES, called as a witness on behalf of the

17 plaintiff, having been first duly sworn, was examined and

18 testified as follows:

19

20 DIRECT EXAMINATION

21

22 BY MR. WOODWARD:

23 Q You are Albert Jones, is that right?

24 A That is right.

25 Q Where do you live, Mr. Jones?

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1 A. Down here towards the farm.
2 Q. Do you work for Mr. Dwight Doggett?
3 A. That is right.
4 Q. How long have you worked for him?
5 A. I worked here twelve years.
6 Q. In January of 1978 when the cattle died, were
7 you involved in the feeding operation at all?
8 A. No, sir.
9 Q. Did you take anything and dump it in the feed
10 mill in January?
11 A. No, sir.
12 Q. In January of 1978?
13 A. No, sir.
14 MR. WOODWARD: Answer these gentlemen.
15
16 CROSS-EXAMINATION
17
18 BY MR. DELK:
19 Q. Mr. Jones, have you ever worked with chemicals
20 on the farm?
21 A. No, sir.
22 Q. Why?
23 A. Because I don't fool with it.
24 Q. You don't want to have to fool with it?
25 A. I said I don't read. I don't fool with it.

1 Q You can't tell one chemical from the other unless
2 you can recognize the package, is that correct?
3 A That is right.
4 Q Have you ever worked around the farm to kill
5 rats?
6 A Yes.
7 Q How have you done that?
8 A I ain't do it.
9 Q I thought -- I just asked you have you ever
10 worked around the farm to kill rats.
11 A Yes, I worked around there.
12 Q Have you worked at killing rats?
13 A No, I ain't killed no rats with it. I don't
14 put that down.
15 Q Put what down?
16 A Rat poison.
17 Q What do they use for rat poison?
18 A What you call it --
19 Q I'm asking you, sir.
20 A I can't read. I can't think of the name of it.
21 Q Have you ever heard them say Thimet?
22 A That might be what it was.
23 Q But you haven't ever worked with that?
24 A No.
25 Q Do you know what it smells like?

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1 A Yes.

2 Q You'd know it if you had worked with it?

3 A Yes.

4 Q It's been used to kill rats, hasn't it?

5 A Yes.

6 Q Do you know where it's been used around the

7 farm?

8 A No, I don't.

9 MR. DELK: I don't have any further questions,

10 Your Honor.

11 THE COURT: Any questions?

12 MR. HARRIS: No, sir.

13 THE COURT: All right.

14 MR. WOODWARD: You can come down, please.

15 THE COURT: Do you need this witness any

16 further, gentlemen?

17 MR. WOODWARD: No. I would ask that he be

18 excused to return to the farm.

19 MR. DELK: He can be excused, Your Honor.

20 THE COURT: Mr. Harris?

21 MR. HARRIS: Yes.

22 THE COURT: Mr. Jones, you are free to go.

23 You can leave, but you can't come back in the courtroom.

24 (Witness was excused.)

25 THE COURT: Next witness.

1 MR. WOODWARD: Call Mr. William B. Simmons, III.

2

3 WILLIAM B. SIMMONS, III, called as a witness on behalf
4 of the plaintiff, having been first duly sworn, was examined
5 and testified as follows:

6

7 DIRECT EXAMINATION

8

9 BY MR. WOODWARD:

10 Q. You are William B. Simmons, III?

11 A. Yes, sir.

12 Q. By whom are you employed, Mr. Simmons?

13 A. Virginia Department of Agriculture.

14 Q. What division of the Virginia Department of
15 Agriculture are you employed by?

16 A. Division of Product and Industry Regulation.

17 Q. How long have you worked for the Department
18 of Agriculture?

19 A. I am in my thirty-fourth year.

20 Q. What type of work do you do for them?

21 A. I am a regulatory inspector.

22 Q. Mr. Simmons, are you familiar with the loss of
23 66 head of cattle on the farm of Dwight Doggett in January
24 of 1978?

25 A. Yes.

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1 Q After you were notified of the loss, did you go
2 to Mr. Doggett's farm?
3 A I did, sir.
4 Q While you were there, did you have occasion to
5 take a number of samples of various feed?
6 A Whatever, I did.
7 Q Do you recall exactly the samples you did take?
8 MR. HARRIS: Establish when.
9 MR. WOODWARD: I'll be glad to ask him.
10 THE COURT: He said when did he take them.
11
12 BY MR. WOODWARD:
13 Q After the loss on January 9, 1978, how quickly
14 did you have the samples taken?
15 A I believe the first trip I made there was on
16 the morning after the cows were dying the afternoon before.
17 Q Did you take the samples at that time?
18 A I took samples that day. I came back the second
19 day and took some more samples.
20 Q What did you take samples of?
21 A Took samples of the corn.
22 Q Is that the corn in the corn bin?
23 A The corn in the corn bin; I took samples of the
24 supplement in the barn.
25 Q When you saw the supplement in the barn, what

1 did you take the samples of?

2 A. One bag of supplement that the Doggett brothers

3 informed me that went into the mixing of the feed.

4 Q. Was that a sealed bag of Pro-Blend in the barn?

5 A. It was not sealed; it was probably opened about

6 six inches. It seems like, maybe, Dr. Edwards or somebody

7 had gotten a sample out of it the night before.

8 Q. You took a boring out of that bag?

9 A. Yes.

10 Q. In addition to those items, what else did you

11 take a sample of?

12 A. Took a sample of the peanut vines and two

13 samples, I believe -- one sample each from two cow feeders.

14 Q. Did you take a sample from the feed mill itself?

15 A. I did that on the second day, sir. I took two

16 samples, if I recall right, one from the back part of the

17 mill where the supplement is poured into the auger there,

18 and the hopper. I took one sample there and one out of the

19 inside of the mill itself.

20 Q. What did you do with those samples, Mr. Simmons?

21 A. I mailed them to the Virginia state laboratory

22 in Richmond.

23 Q. Is that the normal course that is used?

24 A. Yes, sir.

25 Q. Did you label each of the samples?

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1 A. I did, sir.

2 Q. Is that customary, also?

3 A. (Witness nodding head affirmatively.)

4 Q. Have you received test results from the state

5 laboratory of those samples?

6 A. Yes, sir.

7 Q. Mr. Simmons, were you present when Mr. Jones

8 discovered the bag which was subsequently sent to Richmond

9 for analysis of the residue in the bottom?

10 A. No, sir, I wasn't present when he found them.

11 I saw the bags in the barn when I drew the samples, but I

12 wasn't present when the bags were bundled and sent to Richmond.

13 MR. WOODWARD: That is all I have. Thank you,

14 Mr. Simmons.

15

16 CROSS-EXAMINATION

17

18 BY MR. DELK:

19 Q. You first went to the farm on the morning of

20 January 10th?

21 A. I would say it was the morning after the cows

22 started dying in the afternoon. I think the 10th is probably

23 right.

24 Q. Well, if the cows were discovered to be dying

25 on January 9th, you went there the next morning?

1 A. I think that is right, sir.

2 Q. Where was the first place that you went?

3 A. Well, the first place I went was to Mr. Doggett's

4 home and was informed that they were down at the pasture

5 where the cows were. So I went down to the pasture and I

6 found Mike helping with the burying of the animals.

7 Q. They were burying the cattle that morning

8 already?

9 A. Yes, sir.

10 Q. Did you know at that time or have any suspicion

11 as to the cause of death?

12 A. Not at that time until I went back and started

13 the process of getting the samples. Then when we came back

14 to the cow feeder to get the two samples, that was the time

15 that I told them, I said, "I think I know what killed your

16 cows." I said, "I smell Thimet."

17 Q. Your purpose in being there was to assist in

18 determining the cause of death, is that correct?

19 A. That is right.

20 Q. You first smelled Thimet at the feeders?

21 A. That is right.

22 Q. Was the odor pronounced?

23 A. Yes, sir.

24 Q. How many feeders did you detect this odor from?

25 A. Just the two, sir.

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1 Q They were on the county road across the highway
2 from the Doggett farm place, is that correct?
3 A Yes, sir, that is correct, sir.
4 Q Did you detect the odor of Thimet anywhere else?
5 A Well, I didn't until the next day when we went
6 back to draw samples. Mr. Pearson called me from the office
7 and asked me to go back and check the feed mill to see if the
8 Thimet possibly went in through the mill.
9 I went back and found the Doggett boys again. We went
10 back to the mill, and that is when I smelled Thimet at the
11 mill.
12 Q You could smell the Thimet in the feed mill
13 itself?
14 A Yes, sir, you could.
15 Q Could you smell it at a distance from the feed
16 mill?
17 A Well, I could. I am a little allergic to
18 Thimet, and I could probably detect it as far as from here
19 to probably the table.
20 Q Where I'm sitting?
21 A Yes.
22 Q Possibly even ten feet or more?
23 A Yes, maybe ten feet.
24 Q Would you describe the odor of Thimet?
25 A Well, it is a very potent chemical. It is

1 organic phosphate and has a very peculiar odor. To me it
2 is a sickening odor.
3 Q. Is it overpowering?
4 A. I would say so.
5 Q. You wouldn't want to work around Thimet
6 particularly, would you?
7 A. No, sir, I wouldn't.
8 Q. Probably couldn't, could you, if you are
9 allergic to it?
10 A. That is right.
11 Q. Did you detect the odor of Thimet anywhere
12 else on the farm?
13 A. Well, the second day when we were under the
14 shed and got the sample out of the feed mill.
15 Q. Was that January 11th?
16 A. January the 11th we came back, got the two
17 samples out of the feed mill. I opened the barn door, and
18 it was about four -- I'd say three to five bags or empty
19 bags laying on the floor. I picked the bags up and smelled
20 into some of them. I said, "These smell like Thimet," and
21 being around the mill and having the Thimet in my thought,
22 I just considered possibly that was where the odor, you know --
23 Q. But you also detected then an odor of Thimet
24 inside the barn where the food supplement was kept?
25 MR. WOODWARD: I object to that. He didn't

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1 answer that. He specifically said the exact opposite
2 from that.
3 THE COURT: Let him answer the question.
4 MR. DELK: That is what I understood --
5 THE COURT: You called him as your witness.
6
7 BY MR. DELK:
8 Q. Did you smell Thimet inside the barn where the
9 food supplement was stored?
10 A. I said I smelled it in the bags. I wasn't
11 inside the barn; I was standing on the ground at the door
12 where these empty bags were.
13 Q. Could you detect it before you picked the bags
14 up?
15 A. No, sir.
16 Q. When you picked the bags up, did the smell
17 become obvious at that time?
18 A. Well, I could smell the odor of Thimet, but I
19 was -- I just threw it off as probably -- I was at the mill
20 and had the odor of Thimet in my mouth. I just remarked to
21 Mike, I said, "All these bags smell like Thimet." But I
22 said, "I guess it is because I have been close to it." I
23 laid the bags down right in the door where I found them.
24 Q. Did you see any Thimet around the barn?
25 A. No.

Q Did you see any Thimet containers around the farm?

A I think there was one empty box in the back of the barn, but it was not disturbed.

Q Did you see any bags of Thimet on the farm?

A No, sir.

Q Did you see whether there were any?

A I asked if some of the boys had used any, just inquiring in general, and they said they hadn't.

MR. DELK: That is all I have, Your Honor.

REDIRECT EXAMINATION

BY MR. WOODWARD:

Q Mr. Simmons, you say that the second day you went there there were some bags lying in there on the storage --

MR. WOODWARD: Excuse me, Your Honor. Mr. Harris, go ahead.

MR. HARRIS: We were just trying to determine whether we had anything to ask. Excuse us.

MR. WOODWARD: Excuse me.

MR. HARRIS: No, that is all right.

THE COURT: All right, Mr. Woodward.

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1 BY MR. WOODWARD:

2 Q You said the second day you went, which would
3 have been January 11th, that you smelled it that day in the
4 feed mill.

5 A Right.

6 Q Then in the area where the Pro-Blend was stored
7 there were some bags on the floor.

8 A Right at the door, yes, sir.

9 Q Right at the door?

10 A Right.

11 Q Then outside you picked those up, I assume, and
12 you smelled into each one?

13 A I was standing on the ground.

14 Q Put each one up to your nose?

15 A I said if it was five of them I, maybe, smelled
16 in three of them. I detected the odor. I just threw it off
17 as maybe it was the odor I had in my system from smelling
18 it at the mill.

19 Q So at that time you assumed that the Thimet
20 wasn't, in fact, in the bag?

21 A Yes.

22 Q Although there was the odor?

23 A Yes.

24 Q You didn't send those bags off to the lab, did
25 you?

1 A No.

2 MR. WOODWARD: That is all I have. Thank you,

3 Mr. Simmons.

4 THE COURT: Just a second, Mr. Delk.

5 Mr. Harris, any questions?

6

7 RECROSS-EXAMINATION

8

9 BY MR. REED:

10 Q. Mr. Simmons, you say that on the day you went

11 out to take some samples from the feed mill that the smell

12 of Thimet was around that area and that is how you got it

13 in your nose. The day that you found the three bags in the

14 storage barn --

15 A. All right. Yes, sir.

16 Q. The day that we have been talking about, that

17 is the day that you smelled Thimet?

18 A. The taking of the samples from the feed mill,

19 right.

20 Q. Immediately after that you went to the storage

21 barn and picked up several bags and every bag smelled like

22 it had Thimet in it, did it?

23 A. Not -- the bags that I smelled in, yes, sir.

24 Q. And you just dismissed it as being the residue

25 in your own system, either your nose or whatever, is what

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1 made it smell that way, did it not?
2 A Right.
3 Q This is not uncommon for this smell to stay
4 with you for several hours, is it?
5 A Well --
6 Q Sometimes?
7 A It wouldn't stay that long, but I didn't walk
8 more than ten feet from the mill to the barn door. I
9 dismissed it as being in my system.
10 Q You don't question that now, do you, the fact
11 that you dismissed it as being in your system?
12 MR. WOODWARD: I object to that question,
13 that calls for speculation by the witness. I don't
14 know what good that would do.
15 THE COURT: He can still remember what was
16 there then and later, but I don't exactly understand
17 the question. But go ahead and answer the question.
18
19 BY MR. REED:
20 Q Do you still feel that that is what it was,
21 that it was just the Thimet in your system?
22 MR. WOODWARD: Well, Your Honor --
23 THE COURT: I'll sustain the objection.
24 MR. WOODWARD: Objection to the question.
25 It is asking this man to speculate on something that

1 he told us what he knows.

2 THE COURT: I don't think he can speculate.

3 The objection is sustained. He can tell us what he

4 knows, but he can't conjecture or speculate.

5

6 BY MR. REED:

7 Q Mr. Simmons, when you went out there the first

8 time, did you ask the boys where the bags of Pro-Blend were

9 that they had used?

10 A Yes, sir, I did. In fact, I think Mr. Doggett

11 told me it was a bag in the barn, but I went to ask the boys

12 what ingredients went into it, getting the ingredients for

13 the samples.

14 Q Did you ask the boys where they had placed the

15 empty bags?

16 A I didn't have to ask them; I could see them

17 right there in the door.

18 MR. REED: All right, sir. That is all.

19 MR. WOODWARD: Thank you, Mr. Simmons.

20 THE COURT: Do you need this witness any

21 further, gentlemen?

22 MR. WOODWARD: I would ask that he remain

23 briefly, Your Honor.

24 THE COURT: All right.

25 MR. WOODWARD: In hopes that we can let him go

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as quickly as possible.

THE COURT: You will remain in the witness room. Don't discuss your testimony with any other witness.

(Witness was excused.)

MR. WOODWARD: Thank you.

THE COURT: Call your next witness, Mr. Woodward.

MR. WOODWARD: Call Herbert Jones.

HERBERT JONES, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODWARD:

Q You are Herbert Jones?

A Yes, sir.

Q Mr. Jones, where do you live?

A I live in Isle of Wight County, Route 2, Smithfield.

Q What type of work do you do?

A I am employed by VPI Extension Service and I am the county agent for Isle of Wight County.

Q How long have you been county agent?

A. 22 years; I have been here 15.

Q. What does a county agent generally and briefly do? I realize there are a number of jobs.

A. Well, the job is primarily trying to take the technical information from the land grant university and put it in understandable form so that the farmer can take research data and interpret it and use it in any way that he can to improve the standard of living.

Basically, primarily in this county, my job entails working with the adult farmers primarily in the production of commercial agriculture economy as it relates to the soy beans and peanuts and livestock.

Q. You are an employee of the state, are you not?

A. That is right.

Q. Are you familiar with Dwight Doggett losing 66 head of cattle in early January, 1978?

A. Yes, sir, I am.

Q. When did you first become aware of it?

A. I first became aware of it when Mr. Doggett came into the office with some feed samples under his arm and he said, "Herbert," he said, "I lost some cattle." He said, "Here are some feed samples and I'd appreciate if you'd see if you can find out what killed the cattle."

Q. After that did you have occasion to go to Mr. Doggett's farm?

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1 A. Yes, I did. Samples were forwarded to the
2 laboratory in Richmond for analysis.
3 Q. Did you label those samples?
4 A. We have a standard procedure that we use to
5 send the samples off. There were five samples that he had
6 taken from the farm from various locations, and they were
7 labeled as samples 1 through 5 and they were labeled as
8 feed cattle and so identified that when the laboratory tested
9 them in Richmond they would know that they came from Mr.
10 Doggett, from Isle of Wight County to the county agent or
11 through my office.
12 Q. Did you follow the normal course of conduct in
13 sending the samples to Richmond?
14 A. Yes, sir, I did.
15 Q. Did you receive a copy of the report from the
16 Division of Consolidated Laboratory Services concerning the
17 samples?
18 A. Yes, I did.
19 Q. Now, following January 9, 1978, did you have
20 occasion to go to Mr. Doggett's farm, the home place itself?
21 A. Hum -- on two occasions immediately after
22 becoming aware that the animals had died from some reason
23 or another, I went to the farm where they actually died and
24 witnessed the disposition of the carcasses, the cattle
25 actually being put in the ground. Also the -- not the same

1 day, but within a reasonable length of time, I had occasion
2 to visit the home place you made reference to there for the
3 reason of checking with the two sons who were in the process
4 of decontaminating the mix mill that was used to mix the
5 feed.
6 Q Were you interested in trying to find the source
7 of the problem?
8 A Well, I think everybody was. It was quite a
9 mystery why this number of cattle died so suddenly, and it
10 had to be some reasonable explanation as to what happened.
11 But not only was I interested in trying to find out why the
12 cattle died, what killed them, but, you see, he had a large
13 quantity of feed. It was contaminated with something, a
14 foreign substance, and we didn't know at the time what it
15 was that was capable of killing this number of head in a
16 short period of time.
17 I had contacted the people that make -- well, I'll
18 back up. This was several days later. I was trying to help
19 him follow the decontamination procedure once it was
20 established that it was a chemical pesticide by name -- that
21 is what I was going to say. I contacted the company that
22 made this product and they, by phone, told me what to do
23 or how to tell the farmer what to do to decontaminate the
24 mix mill so he could clean this up and continue to use it.
25 Q When you went there, Mr. Jones, on one of your

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1 visits, did you have occasion to go in the little storage
2 barn where the food supplement, feed supplement was stored?
3 A. Yes, I did.
4 Q. All right.
5 A. We were trying to find the source of whatever
6 contaminated it. Well, at that time that I went, it had
7 been established by the lab that the chemical that was
8 responsible for the death of these animals was organic
9 phosphate, Phorate or Thimet.
10 Q. Phorate is the generic --
11 A. Phorate is the chemical.
12 Q. Phorate is the chemical and Thimet is the trade
13 name?
14 A. Trade name.
15 Q. That has been determined already?
16 A. By looking at the report from the lab you could
17 rule out the corn that was the basic ingredient. You could
18 rule out peanut vines because they came back negative. The
19 only other thing put in there was the protein supplement in
20 concentrate use.
21 Q. Pro-Blend 50?
22 A. Yes, that is what the report labeled it as such,
23 and that was what was on the tag in the storage room where
24 they kept the feed.
25 Q. Did you find a number of bags on the floor?

1 A. Yes, I did. I asked Mike, his son, I said,
2 "Would you establish the sequence of events? Would you
3 show me the bags that you opened that morning?" He said
4 that he just threw all the empty bags in the floor over there.
5 I asked him if he'd mind if I looked at them. He said, "No,
6 go ahead," so I started picking up some bags.
7 Q. Did you smell in the bags?
8 A. I did.
9 Q. Did you put your head down to them?
10 A. Yes, I did.
11 Q. What did you find?
12 A. In smelling the bags I found a bag that had a
13 foreign odor to it. It was not associated with the feed.
14 This is the bag that I sent to the lab again -- or not again,
15 the same bag, but sent to the lab again for analysis to see
16 what was in it.
17 Q. Did it have a small residue in the bottom of
18 the bag?
19 A. It did. Very small amount. The bag was emptied
20 out, but it was some residue that was left in the ears, in
21 the bottom of the bag. This bag smelled like it had some
22 kind of chemical in it. The bag was sent to Richmond.
23 Q. Did you send that bag to Richmond?
24 A. I did.
25 Q. Was it properly labeled?

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A. Yes, sir.

Q. Did you send it in the normal course in accordance with your instructions and --

A. Yes, sir.

Q. -- standard procedure?

A. Sent it to the same lab, same man.

Q. Did you receive the report from the state laboratory?

A. Yes, sir, I did. I received it back; I think you have probably got a copy there.

MR. WOODWARD: Answer these gentlemen.

CROSS-EXAMINATION

BY MR. DELK:

Q. Mr. Jones, do you remember what day of the week Mr. Doggett came to your office with feed samples?

A. I believe January the 9th, the day that the cattle --

Q. What time of day was it?

A. I would establish the time before lunch. I didn't document it.

Q. Was it Monday or Tuesday, do you recall?

A. I don't remember. Does anybody have a calendar? Do you know what the 9th is?

1 Q If January the 9th was a Monday, is that the
2 day he came, January the 9th?
3 A The best I remember now, the cattle died on the
4 9th. Now, you have probably seen a letter that Dr. Edwards
5 has already sent out.
6 Q Well, I'm asking you. I'm trying to establish
7 when he came to your office first.
8 A I can't swear that he came on a Monday or Tuesday
9 or Wednesday, but when he did come it was in -- in my opinion,
10 it was before lunchtime. I would put the time at 10:30 to
11 10:45 in the morning.
12 Q Is that when you immediately went to the farm?
13 A No.
14 Q You waited until the next day?
15 A No. I immediately put the samples in the mail
16 and I went to the farm that afternoon. I believe it was
17 that afternoon.
18 Q Were they burying the cattle that afternoon?
19 A When I went to the farm then.
20 Q They were?
21 A Yes, sir, they were. They were burying the
22 cattle when I went to the farm.
23 Q So it was probably Tuesday afternoon when you
24 went to the farm, was it not?
25 A It is possible.

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1 Q Did you yourself take any samples of feed or
2 grain?
3 A No.
4 Q Do you know how Mr. Doggett -- do you know how
5 the samples that were given to you that were sent to Richmond,
6 do you know how they were taken?
7 A Mr. Doggett told me that they were taken from
8 the various feeders that were in the feed lots where the
9 cattle were.
10 Q You understand that Mr. Doggett took the samples
11 or someone for him took them?
12 A Yes, sir, I understood that he took the samples
13 immediately and brought them to me. Now, whether Mike or
14 Dwight, Jr. or himself took them, I couldn't tell you.
15 Q Do you know how they were taken?
16 A I didn't witness the samples being taken. I
17 would assume that they were taken from the feeders and moved
18 by a scoop or shovel or something and put in a brown paper
19 bag that I received them in.
20 Q Now, the chemical Thimet, who manufactures that?
21 A Cyanamid.
22 Q American Cyanamid?
23 A Yes, sir.
24 Q You called them for instructions on how to clean
25 the feed mill?

1 A. Yes, sir, that is right.

2 Q. Now, the chemical is sold under the brand name

3 of Thimet?

4 A. That is right.

5 Q. Did you see any Thimet on the farm?

6 A. No, I didn't.

7 Q. Did you see any Thimet containers on the farm?

8 A. I saw a box, a case, you know, that they put

9 the bags in. They come so many bags to a case. I saw a

10 pasteboard container that was there, but I asked if anything

11 was in it and they said it was empty and I didn't disturb it

12 because it had about six inches of dust on it, and if somebody

13 had tampered with it, I don't think it would have been in

14 that condition.

15 Q. Did you see any other Thimet on the farm?

16 A. No, I didn't see any Thimet then. I saw a

17 box.

18 Q. Did you investigate to determine whether there

19 was any on the farm?

20 A. Hum -- not other than just asking Mr. Doggett

21 had he used any Thimet in the last year.

22 Q. What was his reply?

23 A. They hadn't, to my knowledge, on the farm in

24 three years.

25 Q. Mr. Doggett said it to you?

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1 A. That is what Mr. Doggett told me.

2 Q. Do you recall what day of the week it was that

3 you found the bag that had the odor in it?

4 A. I do. It was on a Monday because I was on my

5 way across the road to Jon Boling and when I arrived at the

6 farm it was pouring down rain, quarter to two, and I got to

7 the meeting at 2:00.

8 Q. This was a week after the incident --

9 A. Yes, sir, right.

10 Q. -- that caused the cattle to die occurred?

11 A. That is right. Approximately a week.

12 Q. Did you go into the storage barn on the Tuesday

13 when you went to the farm?

14 A. No, I didn't go to the home place that day.

15 Q. When was the first time you went to the storage

16 barn where you found the bags?

17 A. The Monday that we just mentioned when I was

18 going to the ASCS meeting.

19 Q. That was the first time you went?

20 A. Yes.

21 Q. So you don't know what happened in that barn or

22 what may have happened before the cattle died?

23 A. No.

24 Q. Do you know what may have happened in the barn

25 between the time that the cattle died and you got there to

find the bag?

A. No, I don't have any idea. Now, can I just say something?

Q. No, sir.

THE COURT: Just answer the question, if you would.

THE WITNESS: Yes, sir.

THE COURT: But you can explain your answer. I will allow you to explain your answer.

BY MR. DELK:

Q. All right.

A. I did not go until that date.

Q. And the odor was apparent in one of the empty bags that you picked up?

A. Yes, sir.

Q. How many bags are there or empty bags on the floor?

A. I did not count them, but I would say a dozen or more.

Q. A dozen or more? How many did you pick up?

A. Four.

Q. You picked up four?

A. Right.

Q. And there were others on the floor?

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1 A Yes.

2 Q Several of them?

3 A Yes.

4 Q You could only detect the odor in one of the

5 bags?

6 A Yes, that is right.

7 Q And that was the bag that you -- did you send

8 that to Richmond yourself?

9 A Yes, sir, I did.

10 Q Did you send any other bags to Richmond?

11 A No, I didn't send but the one bag.

12 Q All right, sir.

13 A I picked up four and only one of them had the

14 odor to it.

15 Q So that is the only one that you smelled?

16 A Only one I sent. I left the other three in

17 the pile with the rest of them.

18 Q Did you recognize the odor when you detected it?

19 A Yes, I had -- from the report knew that --

20 Q You knew what to look for?

21 A Right.

22 Q But you --

23 A I know what it said. I can't swear that Thimet

24 was in that bag, but it had a Phorate -- it had an unusual

25 odor not associated with feed.

1 Q. And you thought it probably was Thimet?

2 A. I thought it was.

3 Q. How strong was the odor out of that bag?

4 A. It was -- Thimet is a very toxic material. I

5 poked my head down into the bag, and when I got to my meeting

6 I got a headache. My eyes got red and my throat started

7 tightening up and I knew that I had breathed in the Thimet.

8 Not enough to hurt me, but I knew that I had been exposed to

9 it.

10 I felt like that was the chemical, the same thing we

11 were looking for was in that bag, and this is the bag that --

12 Q. Did you detect the odor before you actually

13 picked the bag up?

14 A. No, no, I didn't smell it until I put my head

15 down in the bag or opened the bag up and took a whiff of it.

16 MR. DELK: I don't have any further questions,

17 Your Honor.

18 THE COURT: Mr. Harris, Mr. Reed?

19 MR. REED: No, sir, Your Honor, we have no

20 questions.

21 THE COURT: No questions?

22 MR. HARRIS: Let me ask one question.

23

24 EXAMINATION BY MR. HARRIS:

25 Q. When this thing first happened, when Mr. Doggett

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1 came in your office, you suspicioned at that time a phosphate
2 or Phorate, didn't you?
3 A Sir, when he brought the samples in --
4 Q Yes.
5 A -- I smelled all five of them. I mean, normally
6 when you are looking for a foreign --
7 Q Yes, sir.
8 A -- substance in a feed, you smell it because I
9 know what good, clean feed smells like. I wasn't aware
10 the chemical in question was Thimet at that time.
11 Q But it was a chemical?
12 A I was identifying in my own words, in my opinion,
13 the feed was contaminated with a chemical.
14 Q Did you voice your suspicion to Mr. Doggett
15 at that time when he first came in after you smelled --
16 A Yes.
17 Q -- what you thought was a chemical?
18 A I don't remember my exact words, but I said,
19 "Mr. Doggett, it smells like to me by taking this feed, there
20 is a chemical here; there is a foreign material here. I
21 don't know what it is, but it smells strange." He said,
22 "That is what I am here for. I want you to find out what it
23 is."
24 Q So the first time you saw him, the day after
25 this happened, he realized your suspicion that there was a

1 chemical involved, right, because you told him so?

2 A. Well, I told him it smelled like a chemical

3 to me. Now, whether or not he was aware of this before he

4 got there, I don't know.

5 Q. Did you tell him it smelled like Thimet?

6 A. No.

7 Q. You deny mentioning Thimet to him?

8 A. I don't -- I didn't know it was Thimet.

9 Q. I know you didn't, but didn't it smell like

10 that to you?

11 A. I couldn't swear to it, that it did, because

12 it is so many materials. Now, it could have been diazinon

13 or something else.

14 Q. Could be, but Thimet has a very distinctive

15 odor, doesn't it?

16 A. When a farmer is using Thimet in the field and

17 you smell it and see it back on the truck, well, you say,

18 "That is Thimet." But when you bring some in a bag that is

19 not marked, I can't sit here and tell you I can identify

20 Thimet from diazinon.

21 Q. Does Thimet smell different from other chemicals?

22 A. Yes, sir, each chemical has got its own odor,

23 but I am not --

24 Q. You don't know?

25 A. I don't know the smell of five feed samples and

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1 say, "You have got Thimet in here."

2 Q No, that is because you are smelling one.

3 Could you not distinguish it from the other chemicals?

4 A Well, it smelled like a foreign -- it smelled

5 like a chemical that should not have been there, but which

6 one it was, I don't know. I didn't tell him in my opinion

7 it was Thimet.

8 Q But you told him in your opinion there was a

9 chemical involved?

10 A Yes, sir.

11 Q That was the first day?

12 A Yes, that was the first day that I had any

13 knowledge of the loss.

14 Q All right.

15 A And proceeded, you know, to have the samples --

16 Q Then you went out to the barn, and that was a

17 week later?

18 A Well, the report had come back, too.

19 Q You went back to the farm, and that was a week

20 later, right? That was the 16th, wasn't it?

21 A Sir, I went to the farm the cattle were being

22 buried on.

23 Q Listen to my question. The next time you went

24 to the farm to look was on the 16th of January?

25 A I don't remember the exact date, but it was --

1 it could have been that long.

2 Q Well, it was that morning that you were speaking

3 of that you were able to pinpoint so well?

4 A Yes, sir.

5 Q Was the 16th, and that was it, right?

6 A It was a Monday.

7 Q That was a Monday?

8 A Right.

9 Q We have determined pretty well that that happened

10 on the 9th.

11 A Yes.

12 Q So that would be a week later that you went back

13 out to the farm?

14 A All right, sir.

15 Q And that is when you went in and found this

16 dozen bags of Pro-Blend, right?

17 A They were empty bags laying on the floor.

18 Q Also bags all around the side, were there not?

19 A You may have some pictures to prove it, but I

20 didn't see a lot of bags around the sides. I saw the pile

21 of bags in the floor.

22 Q A pile of bags?

23 A Pro-Blend.

24 Q Were there any hanging around the sides that

25 you recall?

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1 A. I do not recall seeing.

2 Q. All right. Just answer my question and that

3 is all. I'm not trying to prove or disprove anything.

4 I asked you simply if you did see any bags hanging

5 around the sides of the walls.

6 A. No, sir, I did not see any bags hanging around

7 the sides of the walls.

8 Q. But at least a dozen bags in the floor?

9 A. Yes, sir.

10 Q. And you picked up four of them?

11 A. Yes, sir.

12 Q. And you sniffed them?

13 A. Yes, sir.

14 Q. You found one that smelled of a chemical?

15 A. Yes.

16 Q. Could you identify the chemical then?

17 A. No, sir, I could not. It smelled just like --

18 he told me not to say anything but yes or no -- but with

19 the Court's permission, the odor associated in the fourth bag

20 I picked up smelled just like the odor in the five bags that

21 Mr. Doggett brought in my office a week before.

22 MR. HARRIS: I think that is all. Thank you,

23 Mr. Jones.

24 THE COURT: Anything further?

25 MR. WOODWARD: One final question.

REDIRECT EXAMINATION

BY MR. WOODWARD:

Q The bag was a Pro-Blend Southern States bag that you smelled the chemical odor in? The one that you sent to Richmond was a Southern States bag?

A Yes, sir, it was a Southern States bag.

Q All right, sir.

MR. WOODWARD: That is all I have. Thank you, Mr. Jones.

THE WITNESS: I can't swear fifty cents it was Pro-Blend, but it was a Southern States bag.

THE COURT: Do you want Mr. Jones to remain? May he be excused, gentlemen?

MR. WOODWARD: I ask he be excused. We have the right to recall him. He'll be in Smithfield and he can come.

THE COURT: Gentlemen, is that agreeable with you to excuse him on the basis that he will be available?

MR. DELK: Yes, sir.

MR. HARRIS: Fine.

(Witness was excused.)

THE COURT: Gentlemen, let's take about a five or ten minute recess.

Just a second.

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1 MR. WOODWARD: Your Honor, may I ask a question
2 before you do that?
3 THE COURT: Just a second. Ladies and gentlemen
4 of the jury, I realize you don't have a jury room to
5 go to unless we lock you up back here. I'm not going
6 to do that. If you have to go down and use the bath-
7 room, whatever, just don't discuss the case among you.
8 I ask if there are spectators in the courtroom, don't
9 discuss anything with the jurors since we are in a
10 very tight situation here with having rooms for people
11 to go to.
12 If you will follow that request, the jurors
13 can move out.
14 Just a minute. What is your question?
15 MR. WOODWARD: Your Honor, my inquiry -- before
16 lunch you asked the jurors if they would find out --
17 we have a number of other witnesses, and depending
18 upon how long you intend to go, to determine the
19 sequence in which I call them.
20 THE COURT: Any of the jurors object to going
21 until about 6:30 or 7:00? If you have some problem
22 now, it might be -- I thought maybe you'd rather do
23 it today rather than tomorrow. Possibly if we go to
24 6:30 tonight or maybe 7:00, we can finish this case
25 tomorrow, hopefully. I'm not going to promise that.

1 We'll go until at least 6:30 and probably that
2 will be about as late as we'll want to go. But we are
3 going that long.
4 Let's take about a five minute recess.
5 Court stands in recess.
6 (A short recess was taken, after which the trial
7 continued as follows:)
8 MR. WOODWARD: I call Mr. F. C. Griffith.
9 THE COURT: Mr. Griffith.
10
11 F. C. GRIFFITH, called as a witness on behalf of the
12 plaintiff, having been first duly sworn, was examined and
13 testified as follows:
14
15 DIRECT EXAMINATION
16
17 BY MR. WOODWARD:
18 Q You are F. C. Griffith?
19 A That is correct.
20 Q Mr. Griffith, where do you live?
21 A I live in Richmond, Virginia, sir.
22 Q By whom are you employed?
23 A Employed by the Commonwealth of Virginia.
24 Q What department or division of the Commonwealth
25 of Virginia are you employed by?

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1 A Presently I am employed by the Department of
2 General Services, Division of Consolidated Laboratory Services.
3 Q What type of work generally do you do in that
4 capacity?
5 A I am presently employed as an analytical chemist.
6 My title is supervisory chemist for pesticide residue
7 analysis.
8 Q How long have you been so engaged in that type
9 of work for the state?
10 A Since 1960, sir.
11 Q What type of educational background do you have?
12 A The state requires I have a bachelor's degree
13 in chemistry.
14 Q From what university?
15 A University of Virginia.
16 Q Have you been engaged in chemical analysis
17 continuously from 1960 until the present?
18 A Except for two years when I served in the
19 United States Army.
20 MR. DELK: Your Honor please, I would
21 stipulate to his qualifications to testify as
22 to the analysis of the materials, if this is what
23 he intends to testify about.
24 MR. WOODWARD: That is correct.
25 THE COURT: Mr. Harris?

MR. HARRIS: Yes, sir.

THE COURT: All right, gentlemen. It is stipulated his qualifications to analyze materials for chemical substances.

MR. WOODWARD: Yes, sir.

THE COURT: Well, he is an expert in that field. All right, sir.

BY MR. WOODWARD:

Q Mr. Griffith, I direct your attention to the loss of some cattle on the farm of A. Dwight Doggett here in the Isle of Wight County in January of 1978. I ask you whether immediately following that, January 13, 1978, and the days following, you received a series of samples to be analyzed by you as a chemist?

A A series of samples, yes. We did receive some samples.

Q Did you perform various tests on those samples?

A Yes, sir. Tests were performed by our laboratory staff.

Q Now, I believe there are a number of reports which you do have relating to that. I would direct your attention to your records, and counsel for the defendants have copies of these, service sample 4380?

A All right.

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1 Q What was the identity of the sample being
2 tested?
3 A The sample, sir, tested is corn feed.
4 Q Do you have a notation where it was from?
5 A The sample came from Mr. Dwight Doggett through
6 the extension service, Mr. Herbert Jones.
7 MR. WOODWARD: You-all have copies of these?
8 MR. DELK: (Nodding head affirmatively.)
9
10 BY MR. WOODWARD:
11 Q Mr. Griffith, I show you a number of reports
12 from your office and I ask you if they are reports to which
13 you are referring, as well as I?
14 A Yes, sir. You asked me only about the 4380.
15 Q Yes, sir.
16 A I have a copy of that. Do you want me to check
17 my other ones?
18 Q No, sir. Just so you and I both have the same
19 thing.
20 A 4380 is the same.
21 Q And the identity of that sample as shown in your
22 records, and I assume your record there was --
23 A Corn feed.
24 Q Where does it indicate the source?
25 A It indicates from the feed mill for Thimet.

1 Q That particular sample you were testing corn
2 feed, supposedly, from a feed mill for the chemical Thimet?
3 A Yes, sir.
4 Q What was the result of the test that you ran?
5 A Our routine procedure detects organic chlorine
6 as well as organic phosphate pesticides which has been
7 established by federal and state procedure we use, and it
8 came up Phorate or Thimet, 13.7 parts per million.
9 Q Now, Phorate, that is a generic name?
10 A Yes, it is a generic name.
11 Q And that product by brand name is known as
12 Thimet?
13 A It is known as Thimet.
14 Q Is Phorate one of the organic phosphate groups?
15 A Phorate is an organic phosphate insecticide.
16 Q Is it considered a poison?
17 A Yes, it can be considered a poison.
18 Q Now, you indicate that the sample of the corn
19 feed from the feed mill which was tested for Thimet indicated
20 Phorate of 13.7 parts per million.
21 Based upon that 13.7 parts per million, and further
22 assuming a feed composition which I believe you have in your
23 records there, are you able to extrapolate or deduct, for
24 example, in 5,000 pounds of mixed feed, how many pounds of
25 Thimet would be present?

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1 A That, sir, was done by Mr. Paul Erwin, and,
2 yes, it can be done mathematically.
3 Q Do you know what the results of that computation
4 is?
5 A May I refer to my notes?
6 THE COURT: Yes, sir.
7 THE WITNESS: He was asking whether we are
8 assuming Thimet is 10 g. or 15 g.?
9 THE COURT: Mr. Woodward --
10
11 BY MR. WOODWARD:
12 Q I believe if you will assume 15% granular Thimet
13 material, which, I assume, is 15 g..
14 A Now, if we base it, say, on 13 -- 15 parts per
15 million --
16 Q All right.
17 A -- we are talking of 15%. Approximately half
18 a pound.
19 Q About half a pound?
20 A Yes.
21 Q And subsequently, also in your records there,
22 Mr. Griffith, did you have occasion to make an examination
23 in your department of another sample of mixed feed? I believe
24 you have it under service sample No. 4373.
25 A I do not have -- readily I can put my hand on

4373.

Q If I might show you a copy.

MR. WOODWARD: You gentlemen have a copy of the same document as I do.

BY MR. WOODWARD:

Q Sample 4373. Was the same type of test run for Phorate in that particular sample os mixed feed?

A Wait one minute.

Q All right. I realize that you have a number of samples. Please take your time.

A Okay. 4373 was a group of five samples.

Q Right.

A Our group 3 of the 5.

Q All right.

A Ones that we ran were No. 3, No. 4 and No. 5.

Q Who ran 1 and 2?

A That would be Mr. Fred Jennings.

Q Mr. Jennings?

A Right. Ran the 3, 4 and 5 tests.

Q Mr. Jennings is here today?

A That is correct, sir.

Q If you would take in sequence then the samples that your group ran and if you would go through each one of the samples as to its identification and the source and

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1 briefly what you ran and whether you found any Phorate
2 present there.
3 A. Well now, we have quite a variety of sources.
4 Could you be a little more specific as to which sample you
5 are referring to, sir?
6 Q. What I'm reading from is we started with 4380.
7 I thought you had done the other one. 4380 you indicated
8 Phorate of 13.7 parts per million.
9 A. Yes, sir.
10 Q. And you extrapolated from that that would give
11 about half a pound of Thimet in a 5,000 pound feed mixture.
12 A. Uh-huh.
13 Q. Now, the second one, I believe you did, Mr.
14 Griffith, or your group did is sample No. 4381 and it is
15 identified as corn feed from the feed box for Thimet. Do
16 you have that?
17 A. I have that.
18 Q. Did you run a chemical analysis for Phorate?
19 A. We ran a chemical analysis procedure which
20 detects Phorate.
21 Q. What were the results as to finding Phorate?
22 A. The result was Phorate 48.1 part per million.
23 Q. That is about four times -- a little less than
24 four times the Phorate you found in the corn from the feed
25 mill?

A. Express that. Four times --

Q. About four times more?

A. Four times more.

Q. Again, that is corn feed from the feed box on the feed mill?

A. 13 times 4 -- yes.

THE COURT: Mr. Woodward, where did that sample come from? I don't think you identified who furnished the sample so we can understand it. I don't understand where it came from.

MR. WOODWARD: You mean how he got it?

THE COURT: What the source of the sample is.

MR. WOODWARD: He has identified it here, Your Honor. They have the copies he does. The identity, which I have shown, says, "Corn feed from feed box on feed mill for Thimet."

THE COURT: I understand that. I'm asking who took the sample. Various people have testified they took samples. Where did that one come from?

BY MR. WOODWARD:

Q. Where did you get that sample from?

A. Same as the 4380. It came to us from the extension service, Mr. Herbert Jones.

Q. Mr. Herbert Jones?

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1 THE COURT: All right. That answers my
2 question.
3 MR. HARRIS: 4380 was 13.7, right? The first
4 one.
5 MR. WOODWARD: 4380 is 13.7 parts per million.
6 MR. HARRIS: Okay.
7 MR. WOODWARD: 4381 is the 48.1 parts per
8 million.
9
10 BY MR. WOODWARD:
11 Q Following along there, Mr. Griffith, 4382 which
12 indicates Pro-Blend 50, 1 bag for Thimet. From whom did you
13 receive that particular sample?
14 A All came in the same manner.
15 Q From Mr. Jones, as far as you know?
16 A Yes.
17 Q What did you detect in that particular sample
18 as to Phorate?
19 A We detected no Phorate.
20 Q Are you familiar with the product Pro-Blend?
21 A No, sir.
22 Q Are you familiar with what its composition is?
23 A No.
24 Q Well, you don't know whether it is supposed to
25 contain Phorate or not?

1 A. If it were, sir, they would be labeled on the
2 bag.
3 Q. A feed supplement does not contain Phorate as
4 a chemical matter, does it?
5 A. Not to my knowledge, sir.
6 MR. DELK: Your Honor, with all due respect
7 to Mr. Woodward and all of us want to move on with
8 the case and proceed with as much dispatch as possible,
9 but I just want to point out that I hope Mr. Woodward
10 may be understanding on our side of the case if we
11 lead our witnesses a little bit more than the Rules
12 of Evidence normally would allow.
13 THE COURT: All right, sir. Well, Mr. Woodward,
14 try to ask questions that --
15 MR. WOODWARD: I'm not trying to lead him,
16 Your Honor. What he is telling us is written down.
17 I've got it and they've got it. He has got it. We
18 are trying to get it across to the jury.
19 THE COURT: Go ahead.
20
21 BY MR. WOODWARD:
22 Q. 4383, if you'd examine that service sample,
23 please.
24 A. Yes, sir.
25 Q. From whom did you receive that sample, please?

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1 A. The same as 4382, 81 and 80, sir, to the best
2 of my knowledge.
3 Q. And the identity of that particular sample as to
4 the source?
5 A. The source as we have it here is corn feed used
6 in cow feed.
7 Q. Corn used in cow feed?
8 A. Yes, sir.
9 Q. And again it is the test that you perform
10 chemically for Thimet, generically known as Phorate?
11 A. Run that by me again, sir. The way that you
12 used it --
13 Q. Is the test again chemically that you performed
14 to determine or detect Thimet, by generic name, Phorate?
15 A. Yes, sir.
16 Q. And in the corn which you tested at that time,
17 did you find any Phorate present?
18 A. No, there was no Phorate detected, sir.
19 Q. Refer to service sample No. 4384. I ask you
20 from whom that particular sample was received.
21 A. The same as the other four samples, sir.
22 Q. What was the identity of the source of the
23 particular sample that you did test?
24 A. The identity is peanut vines, sir.
25 Q. You were testing them for Thimet, again?

A. Yes, sir.

Q. What did you find as far as the presence of Phorate or Thimet?

A. There was Phorate detected to a level of 02 parts per million.

Q. Is that the tolerance at which you begin your measurement?

A. No, sir. That is what we consider an analytical theory. Either see it or do not see it.

Q. So by that standard, you did not see it?

A. We did not see it.

Q. All right.

A. We do not use the word zero.

Q. Now, the next one I have, Mr. Griffith, is 4386. Is there a 4385?

A. It could be, sir, but these numbers are a sequence of numbers which are all service samples. I'm not aware of where 4385 is.

Q. All right, I'd ask that you examine your records there, sir. Sample No. 4386; I'll ask you the identity of what you were testing at that time.

A. This is Pro-Blend 50, code No. 4 for organic phosphate pesticide.

Q. Was that received --

A. Yes, sir.

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1 Q -- from Farmers Service Company for testing?
2 A Yes, sir.
3 Q And in that particular sample, did you detect
4 any Phorate?
5 A We detected no Phorate. Level of detectability,
6 02 parts per million.
7 Q 4387?
8 A That was labeled Pro-Blend 50 with the code
9 number -- would you like me to read the code number?
10 Q No.
11 A All right.
12 Q That is a sample again from Farmers Service
13 Company?
14 A Yes, sir.
15 Q Did you detect any Phorate in that?
16 A There was no Phorate detected again to a level
17 of 02 parts per million.
18 Q Now, I believe there is one other test that
19 you performed, Mr. Griffith, lab number or service sample
20 No. 4416.
21 A Uh-huh.
22 Q All right.
23 A May I see that instead of looking through my
24 notes?
25 Q Yes. What is that a sample of?

A. That is a sample of feed from the decontaminated mill for Phorate.

Q. What date was that sample taken?

A. That was taken on the 18th of January, to the best of our knowledge.

Q. And after decontamination of the feed mill, was there any Phorate present?

A. There was no Phorate detected again to the level of 02 parts per million.

Q. Now, Mr. Griffith, if I may, I do not have a number on this except 57. This is the analysis of the feed residue in the empty Southern States bag.

A. Are you referring to sample 4457, sir?

Q. I assume so. My copy is not on this edge here. It is a test which indicates -- which was referred to Mr. Johnson and you, 4457.

A. May I see what you have, sir?

Q. Yes.

A. All right.

Q. Mr. Griffith, referring to service sample 4457, I ask from whom you received that particular feed bag?

A. That, sir, is a very difficult one for me to answer. You'll have to ask Mr. Johnson. I did receive samples from Mr. Johnson.

Q. From Mr. Johnson?

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A. Yes. Mr. Johnson is the analytical chemist in charge of the feed and fertilizer section.

Q. As to sample 4457, what particular test did you perform as to that?

A. The test that we performed, sir, with the other materials passed through the 40-mesh screen.

Q. What did you find as to those materials which had passed through the 40-mesh screen?

A. They were analyzed by a procedure which detects organic chlorine and phosphate insecticide. We did detect Phorate at a level of 14,600 parts per million.

Q. And that figures out to what percentage of volume?

A. That comes out to 1.46%.

Q. Is that a strong concentration of Phorate?

A. It would depend, sir, upon your definition of strong. You have, say -- say this is 1/10th of it and you have a figure you gave at least 17 or 48 -- some 14,000. I could not --

Q. At 1.46% of Phorate, assuming a mixture -- not saying that that is, but assuming an even mixture and 1.46% would indicate Phorate of about one and a half pounds out of a hundred, would it not?

A. About one and a half out of a hundred.

Q. And you indicated again, I believe, Mr. Griffith,

that Mr. Fred Jennings did the test that I erroneously asked you about?

A. Yes, sir. Sample No. 1; that was done by Fred's lab. We may have had a small part in one part of the confirmation of that.

Q. Did Mr. Johnson perform the microscopic examination of what was found in the bag?

A. To the best of my knowledge, sir, he did.

Q. All right.

A. That is not handled by our laboratory at all.

MR. WOODWARD: Thank you, Mr. Griffith. Answer these gentlemen, please.

CROSS-EXAMINATION

BY MR. DELK:

Q. I hate to go back, but the first sample that you referred to was sample 4380. Am I correct in my recollection that you said that came from Mr. Jones with several other samples that were consecutively numbered?

A. Sir, the way our service samples are handled, they are usually sent to Mr. Erwin's office. Before he retired, all samples came in and he would handle the service sample book. That accounts for the missing number; where it is, I have no idea.

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He in turn would put down who the report was received from, who would get copies of it.

To the best of my knowledge, these samples did, in fact, come from Mr. Jones through Mr. Erwin.

Now, whether it went into one of the other sections then to Mr. Johnson, then to Mr. Erwin, the way in which it was handled, that I cannot answer.

Q The last sample that we spoke about was No. 4457. That was the sample of the residue from the empty bag?

A Uh-huh.

Q The last one that you talked about, when did you make your analysis with the mesh screen and then the chemical analysis? When did you make that analysis?

A All right, sir. We received that sample in the residue lab on 1/31/78.

Q All right.

A We reported it out on 2/2/78. We received it on January the 31st and we reported it out on February the 2nd.

Q And you have no knowledge of where this sample was before you received it on the 31st?

A No, sir, I do not.

Q Do you know whether or not any of the samples brought to you -- do you know how they were actually taken from the -- how they were actually taken on the site?

A. No, sir, I do not know how they were actually taken.

Q. Does it matter how they were taken and is that important in making any judgment as to what the final analyses mean?

A. Yes, sir, it is important.

Q. Does it matter as to the training of the person who takes the sample?

A. That, sir, I cannot answer.

MR. DELK: I have no further questions, Your Honor.

MR. REED: I do, Your Honor.

THE COURT: All right.

EXAMINATION BY MR. REED:

Q. Mr. Griffith, No. 4382, would you get that out, please, sir?

A. Yes, sir.

Q. Identify for me where that came from and what it was, if you know?

A. To the best of my knowledge, sir, it is Pro-Blend 50 V.

Q. And to the best of your knowledge, did that come from the Doggett farm?

A. Yes, sir.

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1 Q Did you detect any Phorate in that bag?

2 A No, sir, there was no Phorate detected in that

3 bag, sir, to a level of 02.

4 Q Did you detect any foreign ingredients, and by

5 that I am referring to fragments of straw, peanut redskins,

6 wood splinters, rodent droppings and burlap or string fibers,

7 anything of those things in 4382?

8 A That, sir, you'll have to ask Mr. Johnson. He

9 is the microscopic expert in our division.

10 Q I believe Mr. Woodward asked you about 4386 and

11 4387. They were two bags of Pro-Blend 50 from Farmers Service,

12 were they not?

13 A To the best of my knowledge, sir, they are.

14 Q And there was no Phorate detected in those?

15 A Again, there was no Phorate detected to a level

16 of 02 parts per million.

17 Q With regard to 4642, would you identify that

18 sample for us, please?

19 A I'm sorry, sir, I don't have a copy of that

20 handy. Could you bring that to me?

21 Q Yes, I will.

22 MR. WOODWARD: Can I see a copy of that?

23

24 BY MR. REED:

25 Q Would you identify that for the jury?

1 A. Sample 4642 is really three samples, all of
2 which are Pro-Blend with different dates of manufacture,
3 different control numbers.
4 Q. Does it appear from the document that the
5 samples came from the Southern States mill in Richmond?
6 A. Yes, sir. Mr. William McAllister, Southern
7 States Cooperative, and I assume that is Richmond.
8 Q. Each of the three samples on that document
9 has a different manufacturing date, does it not?
10 A. Yes, sir. That is what we were furnished.
11 Q. Did you detect any Phorate in any of those
12 samples?
13 A. None of the three samples analyzed contained
14 any Phorate at a level of 02 parts per million.
15 Q. All right. I guess that is all the questions
16 I have on the samples.
17 I would like to ask you about Phorate itself and
18 particularly with regard to its toxicity and perhaps you
19 might just tell the jury how toxic it is, both in relation
20 to other chemicals such as Kepone and also from the standpoint
21 of how long it would retain its toxicity, for instance.
22 A. I --
23 THE COURT: He stated to me, gentlemen,
24 before he answers the question he should qualify
25 himself to answer it. He stated he has only been

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1 qualified to analyze, to make chemical analysis,
2 and he wants to qualify himself prior to answering
3 the question.
4 MR. WOODWARD: I assume if he can answer the
5 question, then he is qualified to answer the question.
6 THE COURT: Stipulate the qualifications if
7 you feel qualified to answer.
8 THE WITNESS: I do have a Master's Degree in
9 toxicology from MCV as well as a PhD level in
10 pathology from MCV.
11 THE COURT: Mr. Woodward, it is stipulated.
12 He feels like you are qualified; I won't proceed, I
13 won't require any further qualification.
14 MR. REED: I'll just ask one question at a
15 time.
16
17 BY MR. REED:
18 Q How toxic is Phorate in relation to other
19 chemicals with which most people are familiar?
20 A The toxicity of Phorate -- I know a lot of
21 people use the terms very toxic, super toxic, extreme toxic.
22 We would generally classify it as a super toxic compound.
23 A super toxic compound is in the range of .5 milligrams of
24 body weight, lethal dosage to kill 50% of test animals within
25 one week.

1 A compound such as parathion would be in the extremely
2 toxic group of 5 to 50. The 50 to 500 would include
3 compounds like Kepone at 113; DDT, 112. It would also
4 include things like aspirin which would be around 300 milligrams
5 per kilogram. We are talking about a bottle of aspirin, say,
6 60 milligrams, 60 capsules. Is that what you are looking
7 for, counselor?
8 Q Yes, sir.
9 A Some of the things we are talking of would be
10 like aldrin which has been used in the corn area, 16 to 46
11 milligrams per kilogram of body weight to kill test animals
12 in a short period of time.
13 To bring this down into other types of chemicals that
14 are toxic, you may not consider vitamins, Vitamin B-12,
15 would be in that group of super toxic.
16 We are talking of a group of compounds here that we
17 are talking about a drop or less would kill. When we are
18 talking of 5 to 50, we are talking about anywhere from, say,
19 several drops up to a teaspoon. We go from 50 to 500 we are
20 talking about a teaspoon to an ounce.
21 Q All right, sir. How long does Phorate retain
22 its toxicity?
23 A How long does it take to --
24 Q How long would it retain this level of toxicity
25 you have just described?

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A As long as it is in intact molecules; as long as it stays as Phorate. Put it out there, there is a chance it will break down in a very short time period to other molecules.

Q So if I dropped some on the floor and it stayed in a pile, how long would it stay toxic?

A It would depend on the amount of moisture in the room; it would depend on the amount of sunlight that would hit it. It is not a cut and dried answer I can give you. How long is Kepone going to last in the James River? I have no idea.

MR. REED: That is all I have, Your Honor.

THE COURT: Mr. Woodward?

MR. WOODWARD: I have no further questions.

THE COURT: All right, sir. Do you need this witness any further, gentlemen?

I'll have to ask you to stay, if you will, and please don't discuss your testimony with any of the other witnesses. Possibly we can release you later.

MR. WOODWARD: I would think so. There are several other chemists.

(Witness stood aside.)

THE COURT: Call your next witness, Mr. Woodward.

MR. WOODWARD: Call Mr. Fred Jennings.

THE COURT: Mr. Fred Jennings, Sheriff.

FRED A. JENNINGS, JR., called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODWARD:

Q You are Fred Jennings?

A Yes, sir.

Q Mr. Jennings, where do you live, please?

A I live at 8220 Ireton Road, Richmond, Virginia.

Q By whom are you employed?

A Virginia Division of Consolidated Laboratory Service.

Q Is that part of the Commonwealth of Virginia?

A Part of the Commonwealth of Virginia.

Q What sort of work do you do for them?

A At the present time I am section leader of the ADC laboratory and formulations lab.

Q Are you a chemist?

A Yes, sir.

Q How long have you been a chemist?

A 33 years, sir.

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1 Q What is your --

2 MR. DELK: If Mr. Woodward is going to have
3 him testify as to chemical analysis of the various
4 samples here, I would stipulate that he is qualified
5 to testify as to that.

6 MR. HARRIS: Yes.

7 THE COURT: Is that all he is going to testify
8 to?

9 MR. WOODWARD: That is it.

10 THE COURT: It is stipulated he is an expert
11 with reference to chemical analysis and substances.

12 Proceed.

13

14 BY MR. WOODWARD:

15 Q Mr. Jennings, I refer you to service sample
16 No. 4373, if you have that report in your record.

17 A Yes, sir.

18 Q Do you have the two-page report there?

19 A Yes, sir.

20 Q You do? Service sample No. 4373 which consists
21 of five samples. Mr. Jennings, from whom did you receive
22 this particular sample?

23 A I received this sample from Mr. Paul Erwin.
24 He then was deputy director of the productivity section.

25 Q Do you know whether these are samples which were

1 received from Mr. William Simmons?

2 A. I believe those samples came from Mr. Jones, sir.

3 Q. Mr. Herbert Jones?

4 A. Yes, sir.

5 Q. Mr. Erwin was the overall head of your department

6 at that time?

7 A. That is correct.

8 Q. Did you receive it in normal course?

9 A. Yes, sir. He just gave them to me like he

10 ordinarily would do.

11 Q. I would ask that you examine your records there,

12 please, and sample No. 1 which shows mixed feed.

13 A. Yes, sir.

14 Q. Tell us what test you performed at that particular

15 time.

16 A. Well, we prepared the sample and we ran the

17 analysis by infrared GC and mastic petrometer. We also took

18 some of the flakes and put them under a microscope and

19 compared them with some other Thimet granule samples, and

20 they matched.

21 Q. The Thimet that you found in the sample matched

22 the Thimet that you had for comparison?

23 A. Yes, sir.

24 Q. Thimet is the same thing as Phorate? Phorate

25 generically?

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1 A Yes, sir.

2 Q Is that one of the organic phosphate groups?

3 A Yes, sir.

4 Q Did you find Thimet or Phorate in that sample

5 No. 1 mixed feed?

6 A Yes, sir.

7 Q What was the average parts per million which

8 you did find?

9 A 75 parts per million.

10 Q Would you, Mr. Jennings, extrapolate, assuming

11 5,000 pounds of mixed feed, how many pounds of Thimet or

12 Phorate would have been in that 5,000 pounds?

13 A Sir, I did not do that. Mr. Erwin did that.

14 Q Mr. Erwin did?

15 A Yes, sir.

16 Q Do you have the results that he performed?

17 A I have it right here.

18 Q And you are familiar with that computation?

19 A Yes, sir.

20 Q Is the computation there correct?

21 A As far as I know, it is correct.

22 Q How many pounds of Thimet, assuming the mixed

23 feed sample of 5,000 pounds would have been based on the

24 75 parts per million found in the sample?

25 A About 2 1/2 pounds.

1 Q In 5,000 pounds?

2 A Yes, sir.

3 Q What is the acute lethal dose of that

4 particular chemical?

5 A It is about 2 to 4 million grams per kilogram,

6 sir.

7 Q If you assumed that cattle have an average

8 weight of 750 pounds, about how many pounds of feed would a

9 head of cattle weighing that eat to get the lethal dose?

10 A About 20 pounds.

11 Q Lethal dose of 50 is what exactly?

12 A Sir?

13 Q Lethal dose of 50 again?

14 A It is about -- I don't quite understand your

15 question.

16 Q Well, as a lay person, let's see if I understand

17 the chemical term.

18 MR. WOODWARD: I don't mean to lead him.

19 It is right in the report.

20

21 BY MR. WOODWARD:

22 Q Lethal dose of 50 -- as I understand, Mr.

23 Jennings, the level at which 50% of those animals will be

24 killed?

25 A That is right.

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1 Q Now, sample No. 2 that you performed under
2 service sample 4373 shows mixed feed. Did you test that
3 for Phorate?
4 A Yes, sir, we tested that, but it was rather
5 difficult to actually quantitate to say exactly what it was.
6 It was right down to the very low range. We knew it was
7 there, but really it was very difficult to calculate it and
8 give a specific figure for it.
9 Q Sample No. 3 indicates mixed feed. Did you
10 test that?
11 A We tested that, but we could not find any
12 Phorate or Thimet in it.
13 Q Did you test the sample No. 4 called grain corn?
14 A Yes, sir, we did that and found nothing in it.
15 Q Did you test another sample called grain corn?
16 A Yes, sir. No pesticides detected in that.
17 Q I believe they were the tests that you did
18 perform in relation to this, Mr. Jennings?
19 A Yes, sir.
20 MR. WOODWARD: Thank you very much.
21 MR. DELK: I have one question.
22
23 CROSS-EXAMINATION
24
25 BY MR. DELK:

1 Q. In sample No. 2, the reason the amount of
2 Phorate could not be quantified is because it was so small,
3 is that correct?
4 A. That is correct.
5 MR. DELK: That is all I have.
6 THE WITNESS: Yes, sir.
7 MR. DELK: Thank you.
8 MR. HARRIS: I have nothing.
9 THE COURT: Any further questions, Mr.
10 Woodward?
11 MR. WOODWARD: No, Your Honor.
12 THE COURT: Thank you, Mr. Jennings. You
13 can step back out. I take it they are going to
14 want you to stay for a while.
15 (Witness stood aside.)
16 THE COURT: Call your next witness.
17 MR. WOODWARD: Mr. Johnson.
18
19 JAMES A. JOHNSON, JR., called as a witness on behalf
20 of the plaintiff, having been first duly sworn, was
21 examined and testified as follows:
22
23 DIRECT EXAMINATION
24
25 BY MR. WOODWARD:

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1 Q Would you state your name, please?
2 A James A. Johnson, Jr..
3 Q Where do you live, Mr. Johnson?
4 A 4004 Cary Street Road in Richmond.
5 Q By whom are you employed?
6 A Division of Consolidated Laboratory Services,
7 Department of General Services, State of Virginia.
8 Q What type of work do you do for them?
9 A I am the supervisor of the feed and fertilizer
10 laboratory.
11 Q Are you a chemist, also?
12 A I am.
13 Q How long have you been a chemist?
14 A In the state analytical lab, since 1941.
15 MR. DELK: Your Honor, the same stipulation
16 I had previously made if he is going to testify as
17 a chemical analyst.
18 THE COURT: Is that what he is going to
19 testify to, Mr. Woodward?
20 MR. WOODWARD: That is right.
21 MR. DELK: Certainly stipulate he is qualified.
22 THE COURT: Defendants stipulate that Mr.
23 Johnson is qualified to give expert testimony as far
24 as chemical analysis, substances and procedures.
25

1 BY MR. WOODWARD:

2 Q. Mr. Johnson, I direct your attention to service
3 sample No. 4457. It has been identified as the feed bag.
4 Did you examine the empty Southern States feed bag?

5 A. Yes, sir.

6 Q. Do you have the feed bag?

7 A. I have the sample. I was asked to bring it,
8 and this is the remainder of 4457.

9 Q. The remainder of the feed bag?

10 A. Yes, sir.

11 Q. From whom did you receive that particular
12 feed bag?

13 A. This was received from Mr. Erwin. At the time
14 he was in charge of the bureau. It came to me from Mr.
15 Erwin.

16 Q. Was it received by him from Mr. Herbert Jones?

17 A. I have the note in the file here that indicates
18 from Mr. Jones, that it was sent to him.

19 Q. Now, this particular feed bag that you have
20 there, is that identified as a Southern States feed bag?

21 A. I believe so. You may examine it if you like.
22 I believe it has the stipulation.

23 Q. I'm just asking you from your recollection.

24 A. From my recollection, it is.

25 Q. Did you conduct a microscopic examination of

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1 the small quantity in the bottom of that feed bag?
2 A. I did.
3 Q. And approximately how much residue of material
4 did you find in the bottom of that feed bag?
5 A. Approximately 10 to 15 grams. That is about
6 half an ounce.
7 Q. If you would show me with your hand how much
8 that would be.
9 A. Perhaps a tablespoonful or a little more. I
10 have most of it again in here.
11 Q. About a tablespoon?
12 A. Yes, sir.
13 Q. And you took that tablespoon and then conducted
14 your microscopic examination?
15 A. I did.
16 Q. What did you find in your examination as to
17 the properties of the particles which you found?
18 A. I found residue in there that was foreign to
19 feed ingredients and that agreed appearancewise with the
20 material that was found in a sample that we had previously
21 run.
22 Q. Is that the one from the feed mills?
23 A. Yes, sir.
24 Q. Now, did you find any materials which were
25 similar to and consistent with the type of materials

1 supposedly in the bag, a feed supplement?

2 A. Yes, sir, I did.

3 Q. There were particles consistent with that?

4 A. Yes, sir.

5 Q. Were there other particles inconsistent with

6 that?

7 A. Yes, sir, there were, also.

8 Q. What particles did you find?

9 A. Referring to original notes, in addition there

10 were other materials not usually seen in commercial samples.

11 These included fragments of straw, peanut redskins, wood

12 splinters, full rodent excretia and mass of fibers and

13 string resembling those from burlap bags.

14 Q. What are peanut redskins?

15 A. The outer shell just over the nut. The red

16 coloration of the peanut nut itself.

17 Q. Is that as I would eat it?

18 A. It pops off. You would eat it if you ate it

19 without hulling it.

20 Q. Were these redskins that color, the same as

21 when one shells the peanut?

22 A. They were small fragments.

23 Q. Could you tell whether it came from Spanish

24 peanuts or regular peanuts?

25 A. I couldn't tell. There were just small fragments.

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1 Q. All right. Now, after you determined these
2 particles which are inconsistent with the properties of
3 those that were supposed to be in there, did you make any
4 tests to determine whether there was any Phorate present?
5 A. A portion of the samples, the ones that
6 contained the highest concentration, was sent to another
7 laboratory and tests for Phorate were made at that time, yes.
8 Q. Was that conducted by Mr. F. D. Griffith who
9 just testified?
10 A. Mr. Griffith's laboratory, yes, sir.
11 Q. In fact, Phorate was found?
12 A. Phorate was found and so reported on his report.
13 MR. WOODWARD: Answer these gentlemen.
14
15 CROSS-EXAMINATION
16
17 BY MR. DELK:
18 Q. Mr. Johnson, did you scrape all of this material
19 out of that bag? How did you get it out of the bag?
20 A. Simply upended the bag over a piece of Kraft
21 paper and shook it.
22 Q. So there could still be residue in the bag?
23 A. There may be still traces of it in there, yes.
24 Q. How did you arrive at -- you mentioned that the
25 material that you referred to Mr. Griffith for his chemical

analysis was the material that had the highest concentration of foreign substance, is that correct?

A. That is correct.

Q. How much of it did you forward to Mr. Griffith?

A. There was approximately two grams, I believe, one and nine-tenths grams was the sample that was sent up to Mr. Griffith's laboratory.

Q. Do you consider that representative degree of concentration of the material in the bag?

A. Hum -- no, not necessarily. What I did was to send to him the fact that I had sieved the samples through a 20-mesh and 40-mesh and so forth and the fraction that contained the highest percentage of this foreign material was sent up for anaylsis.

Q. You have no idea as to -- strike that question, please.

MR. DELK: I have no further questions.

REDIRECT EXAMINATION

BY MR. WOODWARD:

Q. May we see the bag, please?

A. Would you like me to open it?

Q. Yes, sir, I would.

A. I would suggest that you handle the contents

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1 with caution. I mean, any Phorate is quite toxic.

2 Q Save us that. All I want to know is whether

3 it is a Southern States bag. You don't even have to take

4 it out.

5 A (Removing bag from plastic container.)

6 Q We have got the same size bag, don't we?

7 A It appears to be a size 53 on yours.

8 Q Yours has got Southern States on it, just like

9 this one?

10 A Yes.

11 MR. WOODWARD: I ask that that be introduced

12 as Plaintiff's Exhibit No. -- whatever the number is.

13 THE COURT: Let's let him wrap it back up in

14 the cellophane.

15 MR. WOODWARD: Yes, sir, I'm in favor of that.

16 THE COURT: You just are asking for the bag

17 to be introduced, Mr. Woodward?

18 MR. WOODWARD: Yes, sir.

19 THE COURT: All right, sir. I don't think

20 he wants the samples.

21 All right, gentlemen. Mr. Woodward has requested

22 the bag to come in. No objection, or is there any

23 objection to the bag?

24 MR. HARRIS: Subject to it being tied in later.

25 I assume that it will be.

1 MR. WOODWARD: Subject to what?

2 MR. HARRIS: To it being tied in later.

3 MR. WOODWARD: I think it is tied in already.

4 Mr. Jones has testified.

5 MR. HARRIS: I don't think so.

6 MR. WOODWARD: He testified that he sent it

7 to Richmond.

8 MR. HARRIS: That is all that's been done.

9 We have no objection at this point, assuming that

10 it will be tied in, the chain will be established.

11 MR. WOODWARD: I am offering it.

12 MR. HARRIS: For identification.

13 MR. WOODWARD: I am offering it to be admitted

14 in evidence by having been established by Mr. Herbert

15 Jones who testified that he took the bag and forwarded

16 it to Richmond and based upon the testimony of this

17 gentleman from whom it was received.

18 MR. HARRIS: The bag has not been identified

19 nor has it been identified by Mr. Doggett.

20 THE COURT: Do you want to take this motion

21 up outside of the presence of the jury, gentlemen?

22 MR. WOODWARD: I'd like to if it's going to

23 be some question about the bag.

24 THE COURT: Let's take the jury out.

25 (The jury retired to the jury room.)

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1 (Proceedings in the courtroom out of the
2 presence of the jury:)
3 THE COURT: All right, sir. State your
4 objection to the bag coming in, please, Mr. Harris.
5 MR. HARRIS: If Your Honor please, I would
6 object at this point to the bag being accepted as the
7 bag that was the culprit in this case. It has not
8 been tied in either by Mr. Jones or by Mr. Doggett
9 as being the bag that held whatever he put in the
10 mixture on that particular day.
11 THE COURT: I don't follow; I don't follow
12 exactly what you are saying now.
13 MR. HARRIS: This bag has not been identified,
14 Your Honor, by Mr. Doggett as being the bag that he
15 used at that time.
16 THE COURT: Well, the jury is going to have
17 to decide that. It is not a question for me to
18 decide, about this bag coming into evidence. The jury
19 is going to have to decide that fact. But what is the
20 other part of the objection?
21 MR. HARRIS: I assume that the chain has been
22 established as far as from Jones to Mr. Johnson.
23 THE COURT: I think it has sufficiently for
24 that type of case, gentlemen. I don't know.
25 MR. HARRIS: But not prior to that time.

1 Mr. Jones going out there and this being the bag
2 that was the culprit in this case.
3 THE COURT: That, gentlemen, is going to be
4 a matter of argument as to whether the contents of
5 this bag was poured into that mixer on that particular
6 day. That is certainly a matter of argument and that
7 is something that the jury is going to have to decide.
8 Other than that objection --
9 MR. HARRIS: I think that is it.
10 THE COURT: I am going to allow the bag to
11 come into evidence, but I understand what you are
12 saying. You don't stipulate that is the bag; certainly
13 you can argue that.
14 This bag, a Southern States bag from which
15 this witness, Mr. Johnson, had as a sample will come
16 in as Plaintiff's Exhibit No. 4.
17 (Southern States bag was received in evidence
18 and marked as Plaintiff's Exhibit No. 4.)
19 THE COURT: All right, gentlemen.
20 MR. WOODWARD: Your Honor, I assume by your --
21 THE COURT: Call the jury back in, please, sir.
22 MR. WOODWARD: You have admitted it? The chain
23 of evidence you are satisfied with?
24 THE COURT: I don't think there was any
25 objection about that. The objection was raised that --

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1 well, it is on the record what the objection is.
2 MR. HARRIS: Yes.
3 MR. WOODWARD: I understand.
4 (The jury returned to the jury box.)
5 THE COURT: Ladies and gentlemen of the jury,
6 since the ruling has been made outside of your presence,
7 the bag was accepted into evidence as Plaintiff's
8 Exhibit No. 4.
9 Proceed.
10 MR. WOODWARD: I have no further questions
11 of Mr. Johnson.
12 THE COURT: All right, gentlemen. Any questions?
13
14 RECROSS-EXAMINATION
15
16 BY MR. DELK:
17 Q Mr. Johnson, did you notice an odor when you
18 first encountered the bag?
19 A Yes, I did.
20 Q Was it a strong odor or how would you
21 characterize it?
22 A It was a strong odor, quite typical of this
23 identified pesticide. The whole sample just reeked of it.
24 Q Does the bag still have the present odor or not?
25 A I didn't notice it, but I assume that it does.

I opened it just at that time. I was not particularly smelling it.

MR. DELK: I'd like to --

MR. HARRIS: Little vials.

THE WITNESS: I have them up here if you want them.

BY MR. DELK:

Q I'd like to see the vials that you referred to.

A This is what the remains of the 20-mesh and this was the empty bottle from the 40-mesh.

Q These are large pill bottles?

A This is the debris that was found that would not normally -- is not normally seen in feed or a portion of it.

Q What are these courser materials? What do they consist of?

A A number of different feed ingredients. Soy bean meal with some hulls. You can see the straw, a fragment in there; it is not unusual, feed components.

Q Now, the debris, what does that sample consist of, debris consist of?

A There is in the report there some fibrous materials. There is rodent excretia, fragments -- rodent excretia fragments. There might be some small fragments of peanut redskins.

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1 Q. Is that a feather there I see?
2 A. I did not so identify it.
3 Q. Does that look like a feather in there to you
4 in that vial?
5 A. Not particularly. There may be one in there.
6 Q. This gray object down at the bottom.
7 A. We can perhaps see better outside of it.
8 THE COURT: Would you like a piece of paper?
9 MR. DELK: Let me get another piece of paper.
10
11 BY MR. DELK:
12 Q. Does the debris have the same odor of Phorate?
13 A. Same odor of Phorate.
14 Q. Do you see a -- does that appear to be a feather
15 in there?
16 A. That is a feather, yes.
17 Q. Can you identify what type of bird that may
18 have come from?
19 A. It is similar to a pigeon feather, but I couldn't
20 be specific.
21 Q. A pigeon feather? Now, is all of the material
22 that looks like -- is that hair or is all of that burlap
23 twine?
24 A. It looks to be a fibrous material such as you
25 would find in burlap or perhaps in certain types of string.

Q Can you identify where you might find the fibrous material in the same condition as you see it here?

A I have no knowledge of where its origin might have been.

Q Does that look like burlap twine?

A It is very similar to burlap material.

Q What would you have to do to a section of burlap bag to make it look like the material in the debris?

MR. WOODWARD: I object to that. He is asking this gentleman to speculate on a lot of things that are outside the province of chemistry. He has testified as to what it is.

THE COURT: I allowed you to identify all these substances. I'll let him answer it if he can, Mr. Woodward.

MR. WOODWARD: I have no objection.

BY MR. DELK:

Q Does it appear that the burlap has been completely and totally unraveled and separated?

A It is a mixed product. It could have come from a burlap bag; it could have been unraveled burlap twine, string, rope.

Q It could be from a rat's nest, couldn't it?

A It could.

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1 MR. WOODWARD: I object to that, Your Honor.
2 THE COURT: He is on cross-examination.
3 MR. WOODWARD: If he knows. It could come
4 from my house. If he knows, though.
5 THE COURT: All right.
6 MR. DELK: He is an expert. He is entitled to
7 hypotheses.
8 THE COURT: I'll let him answer.
9
10 BY MR. DELK:
11 Q Could it have come from a rat's nest?
12 A As far as I know, it could have, yes.
13 Q When you shook the bag, did the debris come out
14 intertwined and in a lump as it is in the vial?
15 A This perhaps could be concentrated to some
16 extent because it was put on the sieve and shaken and would
17 tend to clump on the sieve.
18 Q So in addition to peanut redskins and straw and
19 burlap material and rodent excretia, we also have feathers,
20 bird feathers?
21 A There is a bird feather in there, yes. Straw.
22 Q And also string that is not exactly burlap, is
23 it not? White string and red string?
24 A Uh-huh.
25 Q Do you see anything else in there that was not

1 enumerated in your report?

2 A Well, I see nothing significant in there that

3 might not have been. All of this debris is not a normal

4 component of commercial feed.

5 Q And this debris is the same debris that we have

6 been talking about here, is the same debris that you had

7 analyzed in your report numbered 4457? Is that the sample

8 number, 4457? Is that correct?

9 A That is correct.

10 MR. DELK: Your Honor, I ask to introduce

11 as Defendants' Exhibit No. 1 -- I suppose it would

12 be No. 2, the debris sample from the vial.

13 MR. WOODWARD: I have no objection.

14 THE COURT: All right. If you will get it

15 back in the sample jar, the debris will come in as

16 taken from the sample numbered 4457 --

17 MR. DELK: I believe that is our Exhibit No. 2.

18 THE COURT: Farmers Service Company Exhibit

19 No. 2.

20 (Vial containing debris was received in evidence

21 and marked as Defendant Farmers Service Company Exhibit

22 No. 2.)

23 MR. DELK: That is all the questions I have,

24 Your Honor.

25 THE COURT: Any other questions for this witness,

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1 gentlemen?

2 MR. REED: Yes, sir.

3

4 EXAMINATION BY MR. REED:

5 Q. Mr. Johnson, how many sealing marks does that

6 bag have in it, the bag that was subject to 4457?

7 A. How many?

8 Q. Sewing marks across the top.

9 A. I have no idea. I did not examine the bag

10 that closely.

11 Q. Could you tell by looking at it right now?

12 A. I don't know. I do not normally examine

13 evidence for that. You can certainly examine it to see if

14 it shows any sewing marks.

15 Q. No, that won't be necessary, Mr. Johnson. Did

16 you have anything to do with sample 4642?

17 A. 4642?

18 Q. Uh-huh.

19 A. I have no reports on those that I made.

20 Q. This is the one that I am referring to.

21 A. This is -- original --

22 Q. Uh-huh.

23 A. Hum --

24 Q. Did you have anything to do with this?

25 A. No, sir, I did not.

1 Q Well, one last question. Are you familiar
2 with mineral salt and its appearance and the appearance of
3 mineral?
4 A It is the normal thing that we look for in our
5 microscopic examination, yes.
6 Q You are familiar with what Thimet or Phorate
7 looks like?
8 A When we first found the foreign material in the
9 original sample, we recognized it as not being a normal
10 feed ingredient.
11 We went and got authentic specimens of the various
12 pesticides. We identified it with Thimet. We segregated a
13 portion of the sample and sent it up for chemical confirmation.
14 Q In your opinion, does mineral salt resemble
15 Phorate?
16 A In my report I stated that it superficially
17 resembled some of the phosphates that are used in feed
18 materials. It is different in color and form and texture.
19 That was merely meant to give a word picture to someone who
20 is familiar with the phosphates.
21 I did a chemical test for phosphates on this material
22 and it was negative.
23 MR. REED: That is all I have.
24
25 REDIRECT EXAMINATION

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1 BY MR. WOODWARD:

2 Q Again, Mr. Johnson, just so there is no

3 misunderstanding, the analysis of this sample was conducted

4 by Mr. F. C. Griffith?

5 A By Mr. Griffith's laboratory, yes, sir.

6 Q And you conducted the microscopic examination?

7 A That is true.

8 Q And his report indicates they found Phorate in

9 what you gave them?

10 A Yes, sir.

11 MR. WOODWARD: I have no further questions.

12 THE COURT: Any further questions, gentlemen?

13 MR. REED: No.

14 THE COURT: You can step down. You can take

15 these samples with you, sir, that were not introduced.

16 THE WITNESS: Dispose of this?

17 THE COURT: Well, throw that away.

18 MR. WOODWARD: I would ask to introduce them

19 with that. If we are going to have one, let's have

20 them all.

21 THE WITNESS: This one has some splinters and

22 stuff in it.

23 THE COURT: Do you want all of this in, Mr.

24 Woodward?

25 MR. WOODWARD: Well, if you have got one, I

1 don't know why we need the one --

2 THE COURT: There has been no examination about

3 what each vial contains. If you want them in, we'll

4 put them in.

5 MR. WOODWARD: No, sir, it doesn't make much

6 difference.

7 THE WITNESS: Do you need me any further?

8 MR. WOODWARD: No, sir, I don't think so. I

9 have examined, as have defense counsel, three state's

10 chemists; Mr. Griffith, Mr. Johnson and Mr. Jennings.

11 Also have Mr. G. A. Pearson. I would like to examine

12 my records a moment to see whether there is any other

13 test other than the ones that these three gentlemen

14 have testified about.

15 THE COURT: If you will go outside and wait,

16 maybe we can excuse you.

17 MR. WOODWARD: Excuse me.

18 THE COURT: All right, call your next witness,

19 Mr. Woodward.

20 (Witness stood aside.)

21 MR. WOODWARD: Your Honor, I would ask that the

22 three state chemists, Mr. Griffith, Mr. Johnson and

23 Mr. Jennings and further, Mr. G. A. Pearson, who has not

24 been called as a witness, be excused at this time

25 unless they have some objection to it.

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1 THE COURT: All right, gentlemen. Do you have
2 any objection?
3 MR. HARRIS: No. We subpoenaed Mr. Pearson.
4 THE COURT: All right, sir. All the witnesses.
5 How about the other three?
6 MR. HARRIS: We subpoenaed all of them, as a
7 matter of fact. I am going to call them.
8 THE COURT: Do you object? Do you want all of
9 them to stay?
10 MR. HARRIS: Yes, sir.
11 THE COURT: Excuse me. Call your next witness,
12 Mr. Woodward.
13 MR. WOODWARD: Call Mr. Robert Taylor.
14
15 ROBERT TAYLOR, called as a witness on behalf of the
16 plaintiff, having been first duly sworn, was examined and
17 testified as follows:
18
19 DIRECT EXAMINATION
20
21 BY MR. WOODWARD:
22 Q You are Robert Taylor?
23 A Yes, sir.
24 Q Mr. Taylor, do you live at Route 1, Box 406,
25 Smithfield?

(A short recess was taken, after which the trial continued as follows:)

THE COURT: Mr. Woodward, your next witness, please.

MR. WOODWARD: Next witness, Your Honor, is the plaintiff himself, A. Dwight Doggett.

THE COURT: Mr. Doggett.

A. DWIGHT DOGGETT, the plaintiff, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WOODWARD:

Q You are A. Dwight Doggett?

A Yes, sir.

Q Mr. Doggett, where do you live?

A Route 258, Smithfield. About half a mile up towards Smithfield.

Q What sort of occupation are you engaged in?

A Farming.

Q How long have you been a farmer in Isle of Wight County?

A Since 1946.

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1 Q In your farming operation do you have occasion
2 to raise cattle?
3 A Yes, sir.
4 Q Prior to January of 1978, for approximately how
5 long had you raised cattle?
6 A To any extent, since 1952.
7 Q In the raising of cattle, what do you do to
8 raise the cattle? What process is followed to get them to
9 market from the time that you get them until the time they
10 go to market?
11 A I have brood cows. The cattle -- you raise them
12 until they are up about 500 pounds and put them on a lot,
13 several feedings, and carry them the rest of the way.
14 Q The cattle that died on January 9, 1978, were
15 what type of cattle?
16 A They were cattle being finished for market.
17 Q What was the approximate --
18 A Steers and heifers.
19 Q Steers and heifers? For the benefit of the jury,
20 what is the difference between a steer and a heifer?
21 A A heifer is a female and the steer is the male.
22 Q Mr. Doggett, the cattle which died, 66 head,
23 on January 9, 1978, what was the approximate average weight
24 of those cattle on that date?
25 A I would say approximately 750 pounds to be

conservative. Might be a little larger. I slaughtered one on December 10th or 12th to have for my own use which weighed 800. That was a month earlier. But to be conservative, I'd say 750 because there were a few smaller ones in the field.

Q On January 7th and January 9th, 1978, who handled the feeding operations for you?

A Dwight, Jr..

Q Was anybody else involved in it other than him?

A No.

Q What was the first occasion on January 9th, 1978, that you were aware that anything was wrong with your cattle?

A About 4:30, before I was getting ready to go in, I rode over there as I did every day. I ride a couple of times. I had a path down by the lot and I enjoyed looking at them.

My boys were working on a house. I said, "Don't stay up late at night. It's cold. I'm going by the feed lot and meet you at home."

I drove over to the feed lot, which was about a mile from where they were working and as I topped over the hill I could see a few cattle down.

Q When you say "down", were they lying down?

A Lying on their side. Some of them staggering,

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1 some of them doing their feet like that. I didn't get out
2 of my pickup truck. I knew something was wrong, so I drove
3 back to where they were working, got the two boys and Mr.
4 Jones and had the lots fixed so we could close them off.
5 I told them, I said, "Get all the cattle out of these
6 lots," and I called Edwards.
7 Q So you shut them off the feeders?
8 A Shut them off the feeders because I had seen
9 them before that day and they were all right.
10 Q In the back feed lot, the feeder is shown in
11 Plaintiff's Exhibit No. 2-K, a picture of the feeder in the
12 back feed lot.
13 A Yes, sir, it is.
14 Q How many head of cattle died in that back lot?
15 A 51.
16 Q The front feed lot shown in Photograph 2-L --
17 A Yes.
18 Q -- how many cattle died in there?
19 A 15.
20 Q A total of 66 head?
21 A Yes, right.
22 Q Now, the cattle that did not die, were some of
23 those sick?
24 A Yes, it was. Especially in the back lot there
25 was 23 left in the back lot. Some of them were staggering.

1 The day we moved them out of that lot, the vet told us
2 we couldn't sell anything off the farm and moved the cattle
3 in the lot with the others.
4 Q Did he treat those cattle?
5 A Yes, he treated them that night and the next
6 day.
7 Q Now, after you discovered the problem with the
8 cattle, what steps did you take following that?
9 A I had about, I reckon, 140, 50 left, so what
10 steps did I take the next day?
11 Q That night and the next day, yes, sir.
12 A Well, I called Ryland Edwards that night and
13 he treated them and opened one up and took some samples.
14 Q When did you start having the cattle buried?
15 A Sometime the next afternoon, I guess. I went
16 to Edwards that morning and asked him would he dig the hole
17 for me.
18 Q Did you know what was wrong with your cattle?
19 A No, I didn't.
20 Q Were there a number of samples taken from various
21 places on your farm?
22 A Yes.
23 Q Who took those samples?
24 A Dwight, Jr. and William Simmons took them.
25 Q You mean the next day?

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1 A. Yes. William Simmons and my son, Dwight, Jr..
2 Q. When did you go to see Mr. Herbert Jones with
3 some of the samples?
4 A. It had to be the next morning. I guess the
5 following morning. It wasn't the 10th or it could have been
6 the 10th. It was the 10th or 11th; I couldn't swear to
7 either one.
8 Q. Were those samples marked?
9 A. Yes, sir.
10 Q. After you talked with Mr. Jones, did you know
11 after that what was wrong with your cattle?
12 A. No.
13 Q. The Thimet which has been referred to here
14 in the feed barn area, I refer to Plaintiff's Exhibit No. 2-F.
15 I'm talking about that area which consists of a compartment
16 in the center of it.
17 A. Uh-huh.
18 Q. It has a door in the front of it.
19 A. Right.
20 Q. Prior to this time and on this time, was there
21 any Thimet stored in there?
22 A. Years ago.
23 Q. How many years ago was Thimet in that
24 particular compartment?
25 A. It would either be 5 or 6 years.

Q. Was there any Thimet on your farm at all?

A. Yes, it was.

Q. Where was that?

A. This was in the shop area in front of a --

Q. What was there?

A. One box with one bag of -- I guess it was 20 pounds of Thimet in it.

Q. If you'd step down here just a moment, I call your attention to Exhibit 2-M and I ask you where the -- first of all, where the Pro-Blend feed supplement was stored.

A. In this barn on the left corner.

Q. Extreme left building in the picture?

A. Yes.

Q. Where was the one bag of Thimet on the farm?

A. In this door of this shop.

Q. At the extreme right of the picture?

A. Right.

Q. Was that a sealed bag of Thimet?

A. Yes, sir.

Q. Was it in that condition before January 7th to January 9th?

A. Yes, sir.

Q. Was it in that condition after that time?

A. Yes, sir.

Q. When was the last time you had used Thimet on

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1 your farm for the raising of crops?

2 A. I would say approximately May of 1976.

3 Q. What was it used for at that time?

4 A. Soy beans.

5 Q. Was that out in the open fields that it was

6 used?

7 A. Oh, yes.

8 Q. Now, there has been some reference to the

9 Thimet box in the right rear of the compartment there in

10 the barn. Was there any active Thimet in that box?

11 A. Oh, no. In that corner of that barn, the best

12 I remember that box -- I didn't realize it was there until

13 after this happened. It was sitting on a pair of platform

14 scales and two bags of old seed corn that had never been

15 moved, been laying there for five years.

16 Q. Was there any active Thimet in that box?

17 A. No.

18 Q. Now, were you there at your farm the day that

19 Mr. Herbert Jones came and found the bag?

20 A. Yes.

21 Q. Did you hear him testify --

22 A. Yes.

23 Q. -- previously? Is his testimony correct, what

24 he said?

25 A. It was as far as I know, yes.

1 Q. Did he then take the bag from you?

2 A. He took the bag.

3 Q. All right.

4 A. I wasn't there when he taken the bag, but he

5 told me that he was going to take the bag. I didn't see

6 him with the bag, no.

7 Q. Now, Mr. Doggett, what process did you take

8 or did you see that was taken to insure there was no

9 further damage after January 9, 1978? What did you-all do

10 on the farm?

11 A. Well, the first thing we had to do, we had to

12 completely cut out the cattle from feeding for the simple

13 reason we didn't know where the poison came from. We took

14 all the cattle off that were on ground feed and we put them

15 in one large field, carried them some hay and chopped corn

16 silage, and that went on for a couple of weeks.

17 They fared very bad; it was cold and changed the feed

18 on them, but we weren't attempting to feed them until we got

19 clear of the feed mill, got the feed mill detoxified.

20 Q. What did you find after you knew what was

21 involved? Did you have your feed mill decontaminated?

22 A. Oh, yes.

23 Q. Mr. Doggett, when did you know what the source

24 of the death of your cattle was?

25 A. When it came back in that report.

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1 Q. From the state laboratory?
2 A. In the report that came back.
3 Q. Did you have any conversations with Mr. Boling
4 following the loss of your cattle?
5 A. Several times.
6 Q. Had you bought the Pro-Blend feed mixture from
7 him?
8 A. Yes, sir.
9 Q. Did you rely upon it being safe for its intended
10 use?
11 A. I had been using it for several years.
12 Q. Is it possible to contain Phorate?
13 A. I wouldn't think so, no.
14 Q. And it is a feed supplement, is it not?
15 A. Yes.
16 Q. Now, in talking with Mr. Boling after this
17 occurred, did he make any statements to you about what he was
18 going to do?
19 A. I asked Mr. Boling and he assured me at the
20 beginning that I would be satisfied to what I had lost.
21 Q. Did he ever indicate to you that he would not
22 stand behind his product?
23 A. Later, five, six weeks, I continued to use
24 Southern States feed, thinking that I had used it all these
25 years and just a mistake had been made. He told me he was

1 going to stand behind it until, I guess, it was six weeks
2 later I had several conversations with him. I gave him a
3 week and I said, "John, there is no need to let this thing
4 go on. Get me an answer in a week."
5 So he gave me an answer that he --
6 MR. DELK: Your Honor, I am going to have
7 to object. At some point it became a question as
8 to when an admission against interest becomes a
9 matter of settlement negotiations which are patently
10 inadmissible.
11 He said they were continuing discussions on
12 whatever kind of restitution or rectification of this
13 matter. The question is where the admission against
14 interest stops and inadmissible other conversations
15 dealing with settlement of this issue start.
16 THE COURT: Well, there had been no attorneys
17 involved at this juncture, had there, gentlemen?
18 MR. WOODWARD: No, Your Honor.
19 THE COURT: This was conversation between --
20 THE WITNESS: Right.
21 THE COURT: -- the two parties, was it not?
22 MR. WOODWARD: What I'm asking in reference
23 to --
24 MR. DELK: Six weeks later, Your Honor. The
25 relationship between any conversations of any defendant

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1 to the time of the incident is simply too far removed
2 in time to even constitute anything like an admission
3 against interest.
4 THE COURT: Not if it is with reference to the
5 subject matter in this suit. Gentlemen, I'm going to
6 allow any statements made between the two parties with
7 reference to this incident. I overrule your objection
8 and note your exception.
9 MR. DELK: Please, sir.
10
11 BY MR. WOODWARD:
12 Q Mr. Doggett, specifically, were you ever in the
13 office of Mr. Boling on occasion when he called Southern
14 States in Richmond and their representative?
15 A Yes.
16 Q Did you hear the conversation that he had with
17 them?
18 A Yes, sir.
19 MR. HARRIS: Objection.
20 MR. DELK: Objection.
21 THE COURT: I'm going to sustain the objection
22 as to what he is relating, what Southern States said.
23 Now, that certainly would be objectionable.
24 MR. WOODWARD: I'm not asking that. I'm asking
25 his conversation, Your Honor.

THE COURT: He can relate what Mr. Boling said to him, but not what somebody at Southern States said.

MR. WOODWARD: I'm not asking that.

BY MR. WOODWARD:

Q Did you hear Mr. Boling's side of the telephone conversation?

A Yes, sir.

Q All right.

A Mr. Boling told me he was talking to the president of Southern States. I don't remember his name.

MR. HARRIS: I can't --

MR. WOODWARD: You can't hear him?

MR. HARRIS: No, I didn't hear what he said.

THE COURT: Could you repeat it?

THE WITNESS: Mr. Boling asked the president of Southern States -- he told me on the telephone and talked at length. I couldn't follow the conversation. He explained, the way he was talking, and he had a lot of confidence in my son and he wasn't dealing with ordinary, run-of-the-mill labor, things to this effect.

When he hung up he told me, "That's all right, you'll be taken care of."

BY MR. WOODWARD:

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1 Q Have you ever been paid five cents?
2 A Not yet.
3 Q Now, Mr. Doggett, in relation to this
4 particular incident and loss of the cattle, did you put
5 Thimet or Phorate -- I realize it is a silly question, but
6 did you put Thimet or Phorate in the feed mill?
7 A No, I had nothing to do with that.
8 Q Did you take part of a tablespoon and put it
9 in the bottom of a Southern States bag?
10 A No.
11 Q Now, Mr. Boling, as far as -- excuse me.
12 Mr. Doggett, as far as the expenditures that you have made,
13 do you have a list there of what was paid as a result of this
14 incident and concerning this incident? Do you have that
15 list with you?
16 A Yes, sir.
17 Q Did you pay Dr. Ryland Edwards for his services
18 as a veterinarian in attending to your animals?
19 A Yes, sir.
20 Q How much was he paid?
21 A $165.00
22 Q Ray Edwards, who testified earlier, who dug
23 the various trenches, how much did you pay him?
24 A $170.00.
25 Q Your son, A. Dwight Doggett, Jr., who testified

that he expended a number of days in burying the cattle and so forth, how much labor was paid to him that would not have been paid to him but for the chemical incident?

A. $250.00.

Q. Your son, Michael S. Doggett, was he involved in the same burying operation?

A. Yes.

Q. How much was paid to him that would not have been paid to him?

A. $250.00.

Q. The gentleman that worked on your farm, Albert Jones?

A. $100.00.

Q. Was this also for additional labor that would not have been incurred?

A. Yes, sir.

Q. Mr. Doggett, as to the 66 head of cattle, you have testified an average weight of 750 pounds. Could you tell us at that time, given your experience and your knowledge of the marketplace, what the average price per pound of those cattle would have been?

A. I think conservative they would be right at $40.00.

Q. $40.00?

A. $40.00 a hundred pounds of weight.

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1 Q Forty cents a pound?

2 A Forty cents a pound. $40.00 one hundred pounds.

3 Q Were you familiar with the market conditions at

4 that time?

5 A Yes, sir.

6 Q Have you recently been engaged in the sale of

7 livestock?

8 A Yes, sir.

9 Q Further, did you at one time have an interest

10 in -- perhaps you still do -- Smithfield Livestock Market,

11 Incorporated?

12 A At one time I had an interest.

13 Q In addition to the loss of the 66 head of cattle,

14 750 pounds, forty cents a pound, were you able to assign any

15 reasonable loss in dollar terms as to the remaining 140 head

16 of cattle which were not killed, and if so, what basis did

17 you use?

18 A After lengthy discussion with my two sons, this

19 figure was all made before I was told I wasn't going to be

20 paid for my cattle. This is very conservative.

21 Q Have you tried to give the lower reasonable

22 figure?

23 A I tried to give the lower. In assessing those

24 other cattle that were there, they lost a minimum of 50 pounds.

25 Q Is that per head of cattle?

A. Per head of cattle.

Q. Why would they have lost 50 pounds?

A. Because you change the feed. They had been on ground feed, all they could eat. You pull them off and put them on corn silage, which they never had any of, and it didn't work out.

Q. Does that money --

A. That is a conservative figure, 50 pounds that they lost. It took them a month to get these cattle back in the right frame of mind and back on feed.

Q. Cattle are very temperamental?

A. Very much so.

Q. Did you have to retain them longer to get them back up to weight or did you market them at a lower weight?

A. Well, on this particular bunch, I wasn't shooting for any specific weight. I was going to market a truckload a week is what I was going to do. This is a normal thing for me all through the year. I use these cattle as taxes for my operation.

Q. Did you in fact do so?

A. Yes, I did.

Q. Is the total damage which you listed for us, Mr. Doggett, $24,135.00?

A. Conservatively, yes, sir.

Q. Did you receive any economic benefit whatsoever

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1 from the dead cattle?

2 A. No.

3 Q. Were they buried as were dead? You didn't sell

4 off part of the cattle skins or anything?

5 A. No. The reason they were buried as such, I was

6 advised that they couldn't be moved off the piece of land

7 that they were on. They couldn't go to the tallow company.

8 They had to be disposed of on that property.

9 The ground was frozen and the boy came over with a

10 backhoe. It was a miracle he could dig. The ground was

11 frozen that deep. They had to be buried in that spot.

12 MR. WOODWARD: Mr. Doggett, if you would please

13 answer these gentlemen.

14

15 CROSS-EXAMINATION

16

17 BY MR. DELK:

18 Q. Mr. Doggett, just going to the amount of damages,

19 I understand that you feel that $24,135.00 is a conservative

20 figure, but that is your computation of the damages, is it

21 not?

22 A. That is what I listed, yes.

23 Q. Would you explain to the jury, Mr. Doggett,

24 when did you use Thimet for rodent control on your farm?

25 A. I can't be specific. I have used it several

times. I guess the last time it was used was probably -- I'd say four to six months prior to this.

Q All right.

A And that is limited.

Q Limited? I mean, it has been used for rodent control?

A Right.

Q Have you examined the contents of this vial which is marked "Debris, Farmers Service Exhibit No. 2"?

A No, I haven't had occasion to.

Q Would you check and look at that?

A Yes.

Q Of the material that -- strike that question. Have you ever seen a rat's nest before?

A Oh, yes.

Q Does this material look similar to that that you might encounter in a rat's nest?

A No, not to me. That looks like shredded twine.

Q When you purchased Pro-Blend, there were two lots that you purchased that are in question here; one on December 11, 1977, of one ton, I understand --

A (Witness nodding head affirmatively.)

Q -- excuse me. of two tons.

A One.

Q Another ton --

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1 A. (Witness nodding head affirmatively.)

2 Q. -- on December 22nd.

3 A. Right.

4 Q. Who picked those up from Farmers Service?

5 A. I can't rightfully answer that. It was either

6 myself or Dwight, Jr. or Mike.

7 Q. It wasn't brought to your farm by Farmers

8 Service?

9 A. Right.

10 Q. You could have picked it up from them before?

11 A. Yes, sir.

12 Q. When you purchased, as a custom you simply would

13 drive your truck to Farmers Service and back it up to the

14 door by the storage area, don't you?

15 A. That is right.

16 Q. Do you load your own truck?

17 A. No. Sometimes I help.

18 Q. You helped? You have seen where Pro-Blend is

19 stored in Farmers Service?

20 A. Yes.

21 Q. And stored in the same condition, in sealed

22 bags by them as it is when you get it on your truck, is it not?

23 A. Yes.

24 Q. Did you notice in these two lots any change in

25 the -- did you conceive any change in the difference between --

1 A. No, sir.

2 Q. They weren't opened at Farmers Service?

3 A. No, not to my knowledge.

4 Q. How were the bags sealed?

5 A. Sewed.

6 Q. Sewed across the top?

7 A. Across the top.

8 Q. Is the bag which is Defendants' Exhibit No. 1,

9 is that representative of the types of bags, the first one

10 that your son, Dwight, Jr., looked at on the stand, is that

11 representative of the type of bag that Pro-Blend --

12 A. Plastic bag, yes.

13 Q. -- is sold in?

14 A. (Witness nodding head affirmatively.)

15 Q. You didn't have anything to do with the mixing

16 of the feed?

17 A. (Witness shaking head negatively.) Not for

18 several years.

19 Q. Sir?

20 A. I have had nothing to do with mixing of the feed.

21 Q. How about the feeding of the cattle themselves?

22 A. I might go over sometimes and help them

23 position the auger in place, but that is the only extent.

24 Q. Do you know what Thimet smells like?

25 A. Yes, sir, I really do.

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1 Q Particularly after this incident?

2 A No. I used it a long time before then.

3 Q Did you notice the odor of Thimet around your

4 farm at any time before or after this?

5 A No.

6 Q Did you see the bag that was discovered by

7 Mr. Jones?

8 A No, I really didn't.

9 Q All right.

10 A I wouldn't swear to it, but I think Mr. Jones

11 came and picked the bag up and told my wife that he got the

12 bag.

13 Q You weren't present at that time?

14 A I wasn't present.

15 Q Are you familiar with where Dwight, Jr.

16 customarily parked the tractor and the feed mill after he

17 finished feeding the cattle?

18 A Yes, I am.

19 Q Is that in one of the buildings shown on the

20 large picture?

21 A Behind one of those buildings.

22 Q Is that an enclosed shed?

23 A Three sides; open front.

24 Q Anyone working on your farm had access not only

25 to the shed where the tractor and the mill were parked, but

also to the barn where the Pro-Blend and other food supplement was stored?

A. Yes.

Q. Also to the shop where there has been testimony that Thimet was stored?

A. It was -- came in, nobody saw him, I guess they would have access.

MR. DELK: I have no further questions.

EXAMINATION BY MR. HARRIS:

Q. Mr. Doggett, have you ever had in recent years employees on your farm other than your sons and Mr. Jones?

A. Yes, sir.

Q. How many would you say?

A. What do you mean in recent years?

Q. Well, in the last couple of years.

A. A couple, yes, sir.

Q. A couple of years before this happened?

A. Last couple of years the only ones have been on the farm have been the three that you have seen today and one more employee.

Q. Who was that?

A. James M. Edwards.

Q. When did he leave the farm?

A. He left -- oh, I guess it was about the 20th of

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1 December, 1977, approximately that date.

2 Q Well, under what circumstances did he leave?

3 A Pleasant; very pleasant.

4 Q All right.

5 A He left and he was offered about $40.00 a week

6 more money. He gave me an offer and made it and I didn't

7 need him that bad. I told him I wished him all the luck,

8 but we were friendly then and friendly now.

9 Q Did the other employees --

10 A No.

11 Q It just happened that he left you, you might say,

12 a few days before this? Had he picked up this Pro-Blend --

13 A No.

14 Q -- on the 22nd?

15 A No.

16 Q You don't recall that you did?

17 A I can't recall. A lot of times I would go to

18 the coffee shop in the morning and come back by Southern

19 States and put 20 bags on the pickup and come home, but I

20 wouldn't swear to that I picked up both.

21 Q If you didn't, Dwight, Jr. would have?

22 A Dwight, Jr. or Mike.

23 Q All right.

24 A It is possible that sometimes they would carry

25 a load, a couple of times, pick it up on the way back or be

in the vicinity or be at a sale. Always it was done when it was getting down low, three or four bags.

Q Mr. Doggett, counsel asked you whether or not you put a spoonful of Thimet in the bag, in the empty bag. Certainly no one has ever accused you of such a thing, have they?

A No, they haven't.

MR. HARRIS: That is all. Thank you, sir.

MR. WOODWARD: Is that all that you have got?

MR. HARRIS: Yes, sir.

REDIRECT EXAMINATION

BY MR. WOODWARD:

Q Mr. Doggett, you heard the testimony, did you not, of Mr. Johnson of the state laboratory?

A Yes, sir.

Q He testified as to the tablespoonful he found in the bottom of the Southern States bag, referred to a number of things. I ask you whether this particular area right here that we referred to, and I'm looking at Plaintiff's Exhibit No. 2-F, right there where the Pro-Blend is --

A All right.

Q -- is there any straw in there?

A No, sir.

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1 Q Do you know what a peanut redskin is?

2 A I thought I knew before, but since I heard it

3 discussed, I know what they are. Very familiar with them.

4 Q Were there any peanut redskins in this compart-

5 ment here whatsoever?

6 A No.

7 Q Have they ever been stored in there in recent

8 years?

9 A No.

10 MR. WOODWARD: That is all I have, Mr. Doggett.

11 THE COURT: All right. Step down, Mr. Doggett.

12 Watch your step.

13 (Witness was excused.)

14 THE COURT: Call your next witness, Mr. Woodward.

15 MR. WOODWARD: Excuse me, Your Honor.

16 THE COURT: Is everybody on the jury all right?

17 MR. WOODWARD: Your Honor, that is the plaintiff's

18 case.

19 THE COURT: Are the defendants ready to proceed?

20 MR. HARRIS: We have motions to make. It is

21 now 6:00 P.M. and I imagine our motions are going to

22 take some length of time.

23 THE COURT: All right. Well, let's see how

24 long it will take.

25 Mr. Sheriff, would you take the jury downstairs?

MR. DELK: Before the jury leaves, may I approach the bench?

(Attorneys approached the bench and a side bar conference was held out of the hearing of the court reporter.)

THE COURT: Sheriff, take the jurors downstairs, if you would, in the foyer there while the Court hears motions.

(The jury left the courtroom.)

(Proceedings in the courtroom out of the presence of the jury:)

THE COURT: All right, sir. Does each defendant have a motion?

MR. DELK: Yes, sir.

THE COURT: All right, sir.

MR. DELK: Your Honor, I move to strike the evidence at this time. The plaintiff has not established a prima facie case.

I know there is a lot of evidence and there are a lot of circumstances in this case that point to, indeed, what is in fact the cause of the death of the cattle, but as I related to the jury in my opening statement, to get from Point A to Point B, you have got to follow a straight path with no breaks in the path. There are some very important ones in this case.

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First, Point B, where the plaintiff wants to go, would be that the cattle have died from the ingestion of Phorate which has been presumably identified as Thimet.

Point A, where we start, are healthy cattle and the purchase of the feed in this case. This is a very important gap. Number 1, the bag on which literally the cornerstones of the plaintiff's case lie, the bag wrapped in the cellophane wrapper, I believe, has been --

THE COURT: A four.

MR. DELK: -- Plaintiff's Exhibit No. 4 has not been identified by anybody in this case but the microscopist, Mr. Johnson, I believe his name is -- right, sir, the microscopist, Mr. Johnson. It has not been identified as the bag which Mr. Jones by his testimony found. It has not been identified as the bag which was delivered to Richmond by Mr. Jones.

It has only been identified as the bag which Mr. Johnson received from another party in the Division of Consolidated Laboratory Services.

Now, to be sure, this is not a criminal case where the chain of possession of the evidence has to be established in order to override a reasonable doubt, but you still have to establish some chain.

THE COURT: Mr. Delk, not to cut you short,

1 I'm going to rule that sufficient chain has been
2 established in a civil case. All the testimony came
3 in without any objection to that whatsoever, so the
4 thrust of that argument, I can rule on that now with
5 respect to both defendants.
6 MR. DELK: I have no other grounds for my
7 particular motion to strike.
8 THE COURT: All right. Mr. Harris?
9 MR. HARRIS: On behalf of Southern States
10 Cooperative, I would move to strike the evidence of
11 the plaintiff and enter up summary judgment in behalf
12 of this defendant.
13 To pursue the argument of Mr. Delk, the chain
14 that I speak of, and the reason I say there is no proof
15 that this bag is the one that was emptied into the
16 mixer, that is the chain that I speak of.
17 There has been no testimony from the man who
18 handled a bag on January the 10th, no testimony that
19 the bag here today is that bag that he handled.
20 It is true it is one of a dozen bags, but there
21 is no testimony that this was the bag. That is the
22 chain that I am speaking of, and it has not been
23 established. There is no proof that this is the bag.
24 For that reason, I think the plaintiff has not
25 established a case to send it to the jury.

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1 Now, to do so would be to tell them that they
2 could engage in speculation, deciding that that
3 particular bag might have been the one that was used
4 by young Dwight Doggett that particular morning.
5 I respectfully move to strike the plaintiff's
6 evidence.
7 MR. WOODWARD: Your Honor --
8 THE COURT: All right.
9 MR. WOODWARD: Judge, in response to that,
10 obviously, plaintiff has introduced evidence, I think,
11 sufficient enough for that jury to find this is their
12 bag, this bag as admitted into evidence without any
13 objection whatsoever. It was identical to the bag that
14 they put into evidence, and Herbert Jones told you
15 where he found it and Doggett told you what he did
16 with the two bags of Pro-Blend that he put there each
17 day. That is the only thing it can be.
18 We do know, and the jury has a right to find
19 this, we do know that there is Phorate which, according
20 to the testimony, is not in Pro-Blend supplement in
21 the bottom of that bag. The jury has a right to
22 conclude that the Phorate, and they extrapolated how
23 much it would be and testified as to the lethal dosage
24 and went all the way through it, the state chemists,
25 without objection and with little cross-examination,

if the Phorate had been in a bag used on another day, they would have been dead on the other day.

The jury has a right to conclude that from the evidence which has been introduced. This is not some bag brought up from another farm and all that. It is right there where he says that he put the bags.

We think clearly they are obligated. We think we have shown a chain of evidence just as far as anybody could. The jury has a right to conclude from that that that bag contained the Phorate which killed the cattle.

Phorate is not supposed to be in there and is in that bag.

THE COURT: Mr. Harris.

MR. HARRIS: That bag was the one that was used that morning? That is what I am trying to drive at.

THE COURT: All right, sir.

Well, gentlemen, my recollection of the testimony, and I don't say that this is the testimony, but my recollection is that these bags were placed in the particular area by young Mr. Doggett as he said, and I certainly think at this juncture it is a jury question. It is up to the jury to decide what the situation was with reference to how the chemical substance got into the bag and whether or not that was, in fact, the bag that the substance went into the feeder. So I think it

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1 is a jury question at this point, gentlemen. That is
2 a question of fact for the jury to decide.
3 MR. HARRIS: There is one other point that
4 Mr. Reed would like to raise, Your Honor.
5 MR. WOODWARD: Your Honor, he has already made
6 the motion to strike. Your Honor has already ruled
7 on it. That is the end of the motion to strike.
8 MR. HARRIS: I don't think the Court is going
9 to cut us off here.
10 THE COURT: I'll allow it.
11 MR. WOODWARD: Exception.
12 THE COURT: Go ahead.
13 MR. REED: Your Honor, I don't know whether you
14 call this a motion to strike or motion for summary
15 judgment, but the plaintiff is pursuing under a breach
16 of warranty theory.
17 The Virginia Supreme Court's most recent state-
18 ment on breach of warranty theory requires the plaintiff
19 to show two things, and I'm quoting now from Logan
20 versus Montgomery Ward & Company, 216 Va. at page 428.
21 THE COURT: I am familiar with the case. I
22 have read it.
23 MR. REED: All right, sir. It says, "Under
24 either the warranty theory or the negligence theory,
25 the plaintiff must show, one, that the goods were

1 unreasonably dangerous, either for the use for which
2 they would ordinarily be put or for some other
3 reasonably foreseeable purpose, and, two, that the
4 unreasonably dangerous condition existed when the goods
5 left the defendant's hands."
6 Now, with regard to the defendant, Southern
7 States, there has been no evidence whatsoever that the
8 dangerous condition existed when it left the mill at
9 Southern States. I don't see how the plaintiff can
10 possibly recover under his warranty theory.
11 THE COURT: That is the additional jury question
12 that the jury has to determine. Based on that, I am
13 going to overrule that. I am familiar, very familiar
14 with that case, Mr. Reed. I overrule your motion on
15 that.
16 Note all exceptions to the Court's ruling with
17 reference to the motions to strike.
18 Now, we have got about twenty minutes, gentlemen.
19 Let me ask you this: how long do the defendants think
20 it will take to put on their evidence tomorrow, both
21 defendants? Can you give me a reasonable estimate,
22 gentlemen? Not counting Mr. Woodward's cross-examination,
23 but can you give me a reasonable estimate, Mr. Delk?
24 MR. DELK: Twenty minutes at the most.
25 THE COURT: Your defendant's evidence?

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1 MR. DELK: Yes.

2 THE COURT: Mr. Harris, can you give me a
3 reasonable estimate?

4 MR. HARRIS: Your Honor, I would say certainly
5 not over a couple of hours.

6 THE COURT: All right. So you gentlemen
7 reasonably conceive if we start --

8 MR. DELK: That depends on Mr. Woodward.

9 THE COURT: Well, I understand that. We could
10 possibly finish the evidence by lunchtime if Mr.
11 Woodward is reasonably brief with his cross-examination.

12 MR. HARRIS: I feel like we can, Judge.

13 THE COURT: All right. Well, I think, gentlemen,
14 that being the case, we have gone long enough today.
15 I'm sure that everybody will agree.

16 Sheriff, bring the jury back. I'm going to give
17 them some instructions concerning the case.

18 (The jury returned to the courtroom.)

19 THE COURT: Ladies and gentlemen of the jury,
20 you have heard all of the plaintiff's evidence up to
21 this point. The plaintiff has rested. The Court
22 heard the motions. This appears to be a good time
23 for us to stop today.

24 I told you you might go to 6:30, but this
25 appears to be a good place to stop, so the Court is

1 going to recess at this time.

2 In order that we can finish this case tomorrow,

3 hopefully, does any member of the jury object to

4 starting in the morning about 9:30? Is that going to

5 give everybody plenty of time to get here?

6 THE JURY: Yes.

7 THE COURT: All right. Is that agreeable with

8 everybody?

9 THE JURY: Yes, sir.

10 THE COURT: 9:30? All right. Counsel, is that

11 all right with all counsel, to start at 9:30?

12 MR. WOODWARD: That is agreeable with plaintiff's

13 counsel.

14 MR. HARRIS: Yes.

15 MR. DELK: Yes.

16 THE COURT: I'd like to start, gentlemen, so

17 we can finish at a reasonable time.

18 Ladies and gentlemen of the jury, I'm going

19 to excuse you at this time. I'm going to instruct you,

20 of course, not to discuss the case. Do not discuss the

21 case among yourselves. I am going to further instruct

22 you that I don't want you to discuss the case with,

23 of course, any of the people in the courtroom or anybody

24 in the community, as far as that is concerned. Even

25 your husbands or your children; just don't discuss the

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1 case with anybody until the case is over. If you
2 want to discuss it with your family after it is over,
3 that is fine, but while the case is still pending and
4 while the matter is still in your hands and before
5 you reach a verdict, I don't want you to discuss the
6 case with anybody.
7 I'm sure there is not going to be a lot of it
8 on the radio and TV coverage concerning this particular
9 case, but if you have to have your television or radio
10 on and a big news broadcast comes on about this case,
11 cut it off. Don't listen to it or read any newspaper
12 articles if you pick up the newspaper in the morning
13 and you see anything about this. Put it down. I don't
14 want you to read anything about it.
15 Is that understood? We have been going too long
16 in this case to have to try it over at some other time.
17 Is that clear to everybody?
18 Any further instructions, counsel?
19 MR. WOODWARD: No.
20 THE COURT: You think that is clear to the jury?
21 All right, ladies and gentlemen of the jury, we look
22 forward to seeing you promptly at 9:30 in the morning.
23 Sheriff, you may release the witnesses with the
24 understanding that they are to be here promptly tomorrow
25 morning. We are going to start with the first witness

at 9:30.

The Court stands adjourned until 9:30 in the morning.

(The trial was adjourned to be reconvened at 9:30 on March 16, 1979.)

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1 MR. DELK: Your Honor, my witness will be
2 Mr. Jon Boling. He has been sworn.
3 THE COURT: Mr. Boling, you have been sworn,
4 of course.
5
6 JON N. BOLING, called as a witness on behalf of Farmers
7 Service Company, having been previously duly sworn, resumed
8 the stand and testified further as follows:
9
10 DIRECT EXAMINATION
11
12 BY MR. DELK:
13 Q State your name, please?
14 A Jon Boling.
15 Q You have already testified that you are the
16 president of Farmers Service Company.
17 A Correct.
18 Q Mr. Boling, with specific reference, if possible --
19 let me ask it this way: strike that question.
20 Do you recall when the Pro-Blend supplement which was
21 invoiced to Dwight Doggett on December 11th and December 22nd,
22 1977, was received or purchased by Farmers Service Company
23 from Southern States?
24 A Can I refer to my notes?
25 Q Yes, sir.

1 A He picked up --

2 Q My question is --

3 A When did we pick it up?

4 Q Yes.

5 A All right. I have got the invoice of 12/9.

6 Q Yes, sir.

7 A The invoice usually is four days later than

8 the pickup. In other words, I don't have the record of the

9 actual pickup, but there is four days lapse. What we do is

10 get a sheet; we pick up the feed and four days later it is

11 invoiced to us.

12 So one lot of Pro-Blend which was -- hum -- three-quarters

13 of a ton was picked up on 12/9, which would have been four

14 days prior to that would have been about 12/7. The earlier

15 invoice that I could find that would go with this was 11/7.

16 Q November 7th?

17 A Yes.

18 Q How much was picked up at that time?

19 A Hum -- sixty bags would have been three tons.

20 Q All right.

21 A And normally we don't stock -- well, Dwight

22 was one of them that used it. We don't usually stock more

23 than a ton, a ton and a half at a time because this is the

24 type of feed you don't want to carry it for three months.

25 You don't want to have it for any length of time.

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1 Q Was Pro-Blend shipped to you by Southern States?
2 A No. We picked up the Pro-Blend.
3 Q Who furnishes the truck?
4 A We have our own trucks and we go to the mill.
5 Q Where is the mill located?
6 A The mill is located on Hull Street in Richmond,
7 just before you go into Richmond. If anybody knows where
8 the Hull Street Bridge is, it is down at the bottom in the
9 lower part of Richmond.
10 Q Do you know what is manufactured at that
11 particular mill?
12 A Only feed.
13 Q All right.
14 A And supplement and dog food, but it is the feed
15 for various animals, not just cattle.
16 Q On the particular days relating to the two
17 invoices you just mentioned of November 7, 1977, and December
18 9, 1977, what other products than Pro-Blend food supplement
19 were picked up from the mill?
20 A All of this is -- well, I'll read some of it.
21 Calf Developer, Silver Stirrup, Trophy Winner, Rabbit Food,
22 Pig Pellets, 38% Supplement, which is a pig pellet, Coarse
23 Dried Corn and Calf Mix.
24 Q What chemicals or nonfoodstuffs were picked up
25 from the plant on those days?

1 A. None.

2 Q. Were the products that you purchased at the

3 Southern States mill then trucked directly to your place of

4 business in Smithfield?

5 A. That is correct. The truck goes to Richmond,

6 picks up feed and goes directly back to Smithfield.

7 Q. How was the Pro-Blend 50 packaged when you

8 received it at the Southern States mill?

9 A. In the 100 pound bag that we have seen.

10 Q. Defendants' Exhibit No. 1 --

11 MR. DELK: Do you have it?

12 MR. HARRIS: Looking for the bag?

13 MR. DELK: Yes. He has got it here.

14

15 BY MR. DELK:

16 Q. You have seen Defendants' Exhibit No. 1 previously

17 in the case?

18 A. Yes.

19 Q. Is this a representative bag of the sort in

20 which Pro-Blend 50 is packaged when Farmers Service picks it

21 up at the mill in Richmond?

22 A. That is correct.

23 Q. How are the bags closed or sealed?

24 A. They are sewn across.

25 Q. Once Farmers Service Company or its employees

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1 pick up these bags at Southern States, exactly what is done
2 with them?
3 A They are brought back in and unloaded and they
4 are put in feed areas that we have and stacked according to
5 the type of feed that we have.
6 If it is Pro-Blend, we put Pro-Blend together and lamb
7 mash and the various products are usually -- we try to
8 separate the pig feed versus the cow feed because you don't
9 want to make a mistake and get the wrong feed and give it to
10 somebody.
11 Q And all of this time you indicated that you
12 keep between a ton and a ton and a half of Pro-Blend on hand?
13 A Yes, sir. Now, as I said, on 11/7 we got
14 three tons, but at that time, you know, somebody might have
15 told Percy, "I'm going to come and pick up a ton," or, "I'm
16 going to be in Monday and pick a ton and a half up."
17 In fact, Dwight, on occasion, told us he is going to
18 pick up a ton so we might over-order, knowing the next day
19 we were --
20 Q All right, sir.
21 A And one time we might have picked up three tons,
22 but at the same time we knew it was going to move.
23 Q The Percy that you referred to is Mr. Percy
24 Hundley.
25 A Yes, sir.

Q He is an employee of Farmers Service?

A Manager.

Q Dwight obviously is Mr. Doggett, the plaintiff?

A Yes.

Q The Pro-Blend is stored in the same bag or package as it is received from Southern States mill?

A That is correct. It is bought in a package and sold in that package. We don't do anything other than sell the bag as it is marked.

Q Do you personally recall having any part in the sale or delivery to Mr. Doggett on December 11, 1977, or December 22, 1977, of the Pro-Blend which is evidenced in the invoices which are already in evidence?

A To my recollection, it would be hard for me to say. I might have loaded it and somebody else might have loaded it; I don't know. We try to catch a person when he comes in; whoever is there always catches them, so I can't remember.

Q Other than unloading -- who loads the Pro-Blend on the Farmers Service truck at the mill in Richmond?

A Hum -- they have a crew of men there that -- with a foreman, and it is his job to take the loading sheet and it comes down across to the truck and is loaded by a crew of about three or four men.

Q So the actual loading at the Southern States mill

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1 is accomplished by Southern States employees?

2 A. That is correct.

3 Q. All right.

4 A. The driver of our truck is supposed to check

5 and make sure that if we get 20 bags of Pro-Blend, we get

6 20 bags of Pro-Blend and not 19. It doesn't always happen.

7 Q. Now, you described the loading of the Pro-Blend

8 on the truck at Southern States mill.

9 A. (Witness nodding head affirmatively.)

10 Q. Who unloads the Farmers Service truck at

11 Farmers Service?

12 A. Hum -- my employees. There are usually five or

13 six men at Farmers Service, employed by Farmers Service.

14 Q. Are they authorized to open bags?

15 A. No, they are not authorized to open a bag.

16 Q. Do they open bags?

17 A. No, they wouldn't have any cause to. Usually

18 when it is unloaded and -- not that I enjoy it any more than

19 anybody else, but usually I'll be out there or Percy will be

20 out there or all of us will be out there, usually someone

21 in a supervisory capacity that is there when it is unloaded.

22 Q. To your knowledge, what other handling is made

23 of these bags in the process of receiving them from Southern

24 States, unloading and storing them in your place of business

25 and selling them to a customer?

1 A That is essentially all that is done.

2 Q Do you sell chemicals at your place of business?

3 A Yes, I do.

4 Q Do you sell Thimet?

5 A Yes, we have sold Thimet.

6 Q Where do you store Thimet?

7 A At another location in the warehouse. The

8 chemicals and the feed are in two different locations.

9 Q Are these in separate enclosed rooms?

10 A At that particular time, it was because we have --

11 this was in December and in December, chemicals -- unless they

12 are kept under heat will -- some chemicals will spoil or

13 won't be usable. So what we have done is move many of our

14 chemicals that are left over, all of them down to a truck

15 garage which is another section because that is the only

16 place that we have a heater, and they are kept under heat

17 during the winter.

18 Q Your general food storage area is not heated?

19 A No.

20 Q Did you have Thimet on hand in December of 1977?

21 A No, we did not.

22 Q All right.

23 A I might qualify that. There was Thimet in

24 the store, but it was not -- it is not Thimet 15. It is

25 a seven and a half percent systemic and a seven and a half

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1 percent Thimet. It has Thimet in it, but it is not Thimet 15.
2 It is not even the same composure, but some of these chemicals
3 that we put out have other products in them when they are
4 made up.
5 We didn't even know it had it until this incident
6 happened and we started looking through and we found this
7 product, so I want to be completely honest.
8 Q Where was that stored?
9 A That was in a separate location from the feed.
10 Of course, all the chemicals are, but it's got Thimet in it,
11 but it also has another chemical which we haven't found in
12 this analysis.
13 Q In other words, the tests that you have seen
14 do not indicate the presence of this other chemical in any
15 of the materials that have been tested, the feed or the --
16 A Right, or the other.
17 Q Now, you offered samples of Pro-Blend 50 from
18 your store or your own place of business for testing, did
19 you not?
20 A Well, as soon as we heard about it we stopped
21 the sale on all the Pro-Blend we had left in there. Mr.
22 Simmons came down and the samples from the bags that we had
23 on our location were sent off.
24 Q To your knowledge, was any contamination
25 discovered in any of the products which you had on hand in

1 your place of business?

2 A. No. In fact, after the tests came back, we

3 were allowed to sell that feed.

4 MR. DELK: I have no further questions.

5 THE COURT: Mr. Woodward, I guess you would

6 be next.

7

8 CROSS-EXAMINATION

9

10 BY MR. WOODWARD:

11 Q. Mr. Boling --

12 A. Can I ask a question?

13 THE WITNESS: Do you need these for anything?

14 MR. DELK: No, I don't plan to introduce them

15 into evidence.

16 THE WITNESS: Excuse me, I'm sorry.

17

18 BY MR. WOODWARD:

19 Q. Mr. Boling, I examined you yesterday. I don't

20 intend to go over the same areas that we had covered in my

21 examination of you then.

22 A. All right.

23 Q. Do you know the reputation of Mr. Doggett being

24 a good farmer in Isle of Wight County?

25 A. I do.

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1 Q And is he?

2 A He is.

3 Q Does he run a first-class farming operation?

4 A In my estimate, he does.

5 MR. WOODWARD: I have no further questions.

6 THE COURT: Mr. Harris, do you have any questions?

7

8 EXAMINATION BY MR. HARRIS:

9 Q Mr. Boling, I may have misunderstood, but you

10 had invoices for Thimet -- excuse me, Pro-Blend that you had

11 picked up on December 9, '77, and November 7, '77?

12 A Yes.

13 Q Or maybe a couple days earlier? Did you mention

14 December 19th --

15 A Well --

16 Q -- '77?

17 A Well, the invoice that -- you have the date that

18 Dwight picked up the first ton?

19 MR. DELK: December 11th. Excuse me.

20 THE WITNESS: Well, the only thing --

21

22 BY MR. HARRIS:

23 Q You mean the first time in December he --

24 A He picked up on the 11th and I am keying it to

25 this on 12/9, that invoice.

1 Q All right.

2 A But I went one more invoice back.

3 Q November?

4 A To November.

5 Q Well, how about the invoice --

6 A Hum --

7 Q -- later in December, of December the 22nd?

8 A Hum -- on 12/19 -- excuse me, I'm sorry.

9 Q All right.

10 A On 12/19 we picked up two tons of Pro-Blend.

11 Q Yes.

12 A Which was actually delivered probably the 17th,

13 but I'm saying, these invoices come about four days after

14 we pick up the feed.

15 Q All right.

16 A The reason I don't have that other copy is that

17 once we check it and make sure we received it, we destroy

18 that copy.

19 Q Well, do your records reveal that Mr. Doggett

20 picked up two tons on December 22nd, though?

21 A I have those invoices here.

22 Q Yes.

23 A 12/22 he picked up one ton of Pro-Blend, and

24 on --

25 Q All right.

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1 A. That was the time he picked up one ton before
2 that.
3 Q. Now, that was evidently Pro-Blend that you had
4 picked up in Richmond on the 17th?
5 A. This is correct.
6 Q. Pretty quick turnover?
7 A. Right.
8 Q. You get Pro-Blend in and it appears that Mr.
9 Doggett might have been one of your biggest customers as
10 far as Pro-Blend was concerned?
11 A. Yes, sir.
12 Q. He picked up just as much as you were getting
13 from Richmond, right?
14 A. We tried not to have him come down and pick up
15 10 bags or 20 bags.
16 Q. But it does appear he was buying just about all
17 the Pro-Blend you were getting from Richmond?
18 A. Well, no, not -- I mean, I still had other
19 customers, but he was one of the larger users of the Pro-Blend.
20 Q. Well, for instance, I see on the 19th or
21 thereabouts of December, you picked up 40 bags.
22 A. Right.
23 Q. And on the 22nd, he picked up 20 bags of that?
24 A. Right.
25 Q. So he was a pretty big customer?

1 A. Right.

2 Q. Would you yourself have picked up the Pro-Blend

3 in Richmond or did you say that was Mr. Hundley?

4 A. Well, I try not to pick up the material, but I

5 have on occasion gone up there and picked it up. But I don't

6 recall whether I picked this up.

7 Q. You don't recall?

8 A. Right.

9 Q. In any event, while you did pick it up, you

10 are familiar with the smell of Thimet, aren't you?

11 A. Yes, sir.

12 Q. Have you ever smelled any Thimet around that

13 plant or in any bag that you picked up from the plant, from

14 the mill?

15 A. No. I went to the mill and went up through the

16 whole mill with the plant manager. I couldn't -- I didn't

17 detect any Thimet.

18 Q. I believe you said that the only thing at the

19 mill is food products?

20 A. To my knowledge.

21 Q. No chemicals? All the things you mentioned in

22 a hurry, and I wasn't able to write them down, but all of

23 those, is there a chemical in there that you picked up at

24 the mill? Pig Pellets?

25 A. We are not allowed to haul chemicals when we

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1 haul feed.

2 Q That is unlawful, as a matter of fact?

3 A It is unlawful. Even if I instructed the truck

4 to leave the mill and go to the warehouse which is on the

5 other side of Richmond and pick up chemicals, the warehouse

6 would not put them on the truck.

7 Q Getting to the samples that were taken, were

8 you present when that was done?

9 A The samples?

10 Q Yes.

11 A Hum -- I'm not sure. I might have been, but

12 I'm not sure.

13 Q I know you were greatly concerned at that time

14 with the situation.

15 A Right.

16 Q Do you recall Mr. Simmons coming to the store

17 to get those samples immediately after?

18 A I can't recall whether, you know -- I think I

19 was, but I'd hate to --

20 Q Well, the samples that were taken --

21 A Go ahead, excuse me.

22 Q The samples that were taken from the Pro-Blend

23 in your store came from part of the Pro-Blend that you had

24 picked up or had had picked up in Richmond, isn't that correct?

25 A This is out of the same lot that we picked up.

1 Q When you say the same lot, that is food that
2 would have been packaged at the same time and put into bags
3 and would be from the same mixture and lot at the mill?
4 MR. WOODWARD: Well, Your Honor, I think he
5 is asking Mr. Boling something he can introduce
6 through his own witnesses. He is asking Mr. Boling
7 questions as if he were running Southern States in
8 Richmond. I don't think it is proper.
9 THE COURT: If Mr. Boling knows it came from
10 a certain lot, he can say. If he didn't --
11 MR. WOODWARD: If he didn't see the manufacture
12 of it, there is no way in the world he could say.
13
14 BY MR. HARRIS:
15 Q All right, sir.
16 A I can't testify that I distinctly know that it
17 came from that lot. They make it in certain lots.
18 Q Yes, but all of these bags that you had were
19 the same lot number, were they not?
20 A This is correct.
21 Q All right.
22 A I didn't actually make it.
23 Q Do you know that lot number or do you have a
24 record of it --
25 A No.

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1 Q -- yourself? All right. When did you first
2 become aware of the problem at Mr. Doggett's farm?
3 A I'm pretty sure it was on Tuesday, the 10th.
4 Q In other words, the day after?
5 A Yes.
6 Q The day after it happened?
7 A The day afterwards. I believe that I spoke with
8 him on Wednesday.
9 Q I'm sorry, you spoke --
10 A I spoke with Mr. Doggett on Wednesday concerning
11 it.
12 Q Did you have occasion to come down to Mr.
13 Doggett's operation?
14 A I spoke with Dwight on Wednesday to find out,
15 you know, what I could do, to find out what the problem was.
16 At that time we didn't know what it was, and he told me that
17 we weren't concerned any and he didn't know what it was, and,
18 you know, don't worry about it.
19 Q Did you suspicion a --
20 A No.
21 Q -- chemical?
22 A At that time I don't think anybody suspicioned
23 anything.
24 Q Well, when you went to the farm, where did you
25 go?

1 A When I went out to the farm, it was on Monday.

2 Q That would have been the 16th?

3 A That would be the 16th.

4 Q Who were you with?

5 A Herbert Jones had come by. I told Herbert that --

6 well, I was sick at the time. Anyway, I had a terrible cold,

7 but I told Herbert I hadn't been out there and I wanted to

8 go. He said, "Well, come on and we'll go together."

9 Q Do you recall about what time of day?

10 A About around 10:00 or 10:30.

11 Q It doesn't matter, but who was at the farm when

12 you were there?

13 A Little Dwight, I think, was there.

14 Q All right.

15 A I'm not sure whether it was Dwight was there --

16 Senior was there or not, I'm not sure.

17 Q Did you look around to see what you could see?

18 A Well, I was more or less making the courtesy

19 call to see if I could do anything for them, and Herbert --

20 Q Did you?

21 A Hum --

22 Q Did you look in the small area where the

23 Pro-Blend was stacked?

24 A I did.

25 Q Did you find a great number of bags there?

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1 A. There were a number of bags on the floor.

2 Q. Did you stir some of them up or move any of

3 them?

4 A. I didn't personally. You had testimony that

5 Mr. Jones picked up some bags.

6 Q. Did you see him do that?

7 A. I did.

8 Q. Were you there when he smelled the Thimet in

9 the one bag?

10 A. I was.

11 Q. In stirring up the bags, did you stir up any

12 mice or anything like that?

13 A. I didn't see any mice.

14 Q. Did you notice any Thimet boxes or bags?

15 A. There was one box of Thimet in the back portion

16 of the -- where they stored the Pro-Blend.

17 Q. Did you have occasion to look in the box?

18 A. No, I don't -- at that time, other than -- you

19 have got to piece it all together, but at that time I still

20 don't think he actually thought it was Thimet. He had

21 smelled offensive odor in a bag, and we sent it off to be

22 analyzed, but I don't think the connection between -- I

23 didn't look in the box, and Mr. Jones didn't either.

24 Q. But even today, after that, even though you

25 didn't suspicion Thimet and nobody else did right at that

point, you remember that you saw the Thimet box, right?

A Yes.

Q All right. How close was that to the Pro-Blend?

A I think it was probably 30 feet.

Q 30 feet? All in one room there --

A That is correct.

Q -- where the Pro-Blend is --

A Right.

Q -- stored? Do you consider it good farming practice, sir, to store chemicals such as Thimet next to the Pro-Blend --

MR. WOODWARD: Your Honor, I --

BY MR. HARRIS:

Q -- food supplement?

MR. WOODWARD: I object to that question.

MR. HARRIS: You asked --

MR. WOODWARD: Not that Thimet was stored in the back. There was a Thimet box that Mr. Jones testified yesterday had 6 inches of dust on it. He hadn't inquired of him. He is trying to impute the Thimet box with the dust on it. I object to it.

MR. HARRIS: Whether it had Thimet or not, that is up to the jury to determine. It is a Thimet box.

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1 THE COURT: I'll allow him to answer the
2 question.
3 THE WITNESS: Repeat the question. You
4 confused me.
5
6 BY MR. HARRIS:
7 Q Whether you consider it good practice of a
8 farmer to store a chemical as powerful as poison, you might
9 say, as Thimet in the same area where food supplement is
10 stored.
11 A If there was Thimet in that box, it wouldn't
12 be a good practice.
13 Q All right.
14 A I can't attest to whether there was Thimet in
15 the box or not.
16 Q It didn't have 6 inches of dust on it, did it?
17 A To my recollection, I cannot say whether it
18 did or didn't because, as I said, I noticed the box, but I
19 didn't go back to the back of the building to look at the
20 box. In fact, I don't think either one of us did. We were
21 more interested in the bags.
22 Q All right.
23 A My wife says I don't notice the dust at home.
24 MR. HARRIS: That is all I have. Thank you,
25 sir.

THE COURT: Is that all for this witness?

MR. WOODWARD: I have no further questions.

THE COURT: Thank you.

(Witness was excused.)

MR. DELK: Your Honor, that is all the witnesses that Farmers Service Company intends to present today.

THE COURT: Farmers Service Company rests?

MR. DELK: Our case is rested.

THE COURT: All right, Mr. Harris.

MR. HARRIS: Call Mr. Groseclose.

Can we delay any motions that we might have at this time on behalf of Southern States? I'm not sure I would have any, but I don't see any need of --

THE COURT: All right.

MR. HARRIS: Is that all right with you, Tom?

THE COURT: Watch your step.

MARK R. GROSECLOSE, called as a witness on behalf of Southern States Cooperative, Incorporated, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

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1 Q Mr. Groseclose, would you state your name, please?
2 A Mark R. Groseclose.
3 Q Your address?
4 A 2033 Wrens Nest Road, Richmond.
5 Q Your occupation?
6 A Manager with Rollins, Orkin.
7 Q What is Rollins, Orkin?
8 A Well, Orkin Exterminating Company. Orkin
9 Exterminating Company is owned by Rollins, Incorporated.
10 Q Your educational background, please?
11 A BS degree in marketing at the University of
12 Tennessee.
13 Q Mr. Groseclose, as manager in Richmond of the
14 Orkin operation, did your firm have occasion for a period
15 in 1977 to have a contract with Southern States?
16 A Yes, sir.
17 Q Did that concern the mill there on Hull Street?
18 A Yes, sir.
19 Q Their food operation there? What was the job
20 of Orkin to be?
21 A It was a monthly pest control service.
22 Q Mr. Groseclose, at my request, have you studied
23 and determined whether or not Orkin uses Thimet in any of
24 its pesticides, pest control?
25 A Yes, sir. I researched our sources and I found

that we do not have Thimet available as a chemical for use.

MR. HARRIS: Answer counsel, please.

MR. DELK: I have no questions.

MR. HARRIS: Mr. Groseclose, thank you very much.

THE COURT: Mr. Woodward.

MR. WOODWARD: I have got several.

MR. HARRIS: Excuse me.

CROSS-EXAMINATION

BY MR. WOODWARD:

Q Do you use any phosphates?

A We use organo-phosphates, yes, sir.

Q You do use organo-phosphates?

A Yes, sir.

Q That is a poison?

A Yes, sir.

Q That is part of the general organic phosphate group, is it not?

A Yes, sir.

Q And you use that in the Richmond plant?

A Hum -- in our office, in our -- yes, sir.

MR. WOODWARD: That is all I have. Thank you.

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REDIRECT EXAMINATION

BY MR. HARRIS:

Q You use that at the mill, food mill?

A The organo -- one or two, possibly, of the chemicals that were used would have been organo-phosphates.

Q But not Thimet?

A No, sir.

THE COURT: Any other questions for this witness?

MR. WOODWARD: No, I have no further questions.

THE COURT: Do you need this witness any further, gentlemen?

MR. HARRIS: Not for me. He may be excused. He was on his way to Atlanta this morning.

MR. DELK: No, sir.

MR. WOODWARD: I have no objection.

THE COURT: You may be excused. Thank you.

(Witness was excused.)

THE COURT: Call your next witness.

MR. HARRIS: Mr. Chaney.

RONALD B. CHANEY, called as a witness on behalf of Southern States Cooperative, Incorporated, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Mr. Chaney, would you state your name, sir?

A. Ronald B. Chaney.

Q. Where do you live?

A. 2 Lee Avenue, Highland Springs, Virginia.

Q. What is your occupation?

A. I am the manager of Terminix Engineers.

Q. What is Terminix Engineers?

A. We are pest control, exterminating company.

Q. Your educational background?

A. High school.

Q. How long have you been manager of the Terminix in Richmond?

A. Hum -- 14 months.

Q. Mr. Chaney, at my request, did you -- excuse me. Have you checked your records to see whether or not Terminix had a contract with Southern States in Richmond in regard to pest control at the Richmond mill?

A. Yes, sir, we do.

Q. That is the food operation part?

A. That is right.

Q. Did you find that you did have such a contract?

A. Yes, sir.

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1 Q That was during the year 1977 or since?

2 A Yes, sir.

3 Q And prior to 1977?

4 A Back to 1972.

5 Q Mr. Chaney, at my request, have you checked your

6 records and studied this to determine whether or not Thimet

7 is used in any of the products that you use, that Terminix

8 uses for pest control?

9 A Yes, I have.

10 Q Is Thimet used in regard to any pest control?

11 A No, it is not.

12 MR. HARRIS: Thank you, Mr. Chaney.

13 Answer these gentlemen.

14

15 CROSS-EXAMINATION

16

17 BY MR. WOODWARD:

18 Q You do use the organic phosphate group of

19 chemicals, don't you?

20 A Yes.

21 Q That is a poison?

22 A Yes, it is.

23 Q In addition to what you do, people from time to

24 time do their own work in extermination of pests, don't they?

25 MR. HARRIS: Well, people may, but I --

THE COURT: I don't know if he's in a position to know unless he had seen evidence of it.

BY MR. WOODWARD:

Q You don't know whether Southern States used its own chemicals themselves in rodent or pest control?

MR. HARRIS: Of course he doesn't, Judge.

THE COURT: He may.

MR. HARRIS: That is not a permissible question.

THE COURT: He can answer it yes or no.

BY MR. WOODWARD:

Q Do you know whether they do or do not?

A I do not, but to my knowledge, they do not.

Q As I understand, Orkin was going to work there and you were doing some work there?

A We would have worked --

Q You and Orkin?

A That I don't know. We were doing some work.

MR. WOODWARD: Thank you very much. I have no further questions.

MR. HARRIS: Thank you, Mr. Chaney.

THE COURT: Can this witness be excused, gentlemen?

MR. WOODWARD: As far as I am concerned.

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1 MR. HARRIS: Going back just one minute.

2

3 REDIRECT EXAMINATION

4

5 BY MR. HARRIS:

6 Q There is no Thimet used in any product that you

7 use for extermination?

8 A No, sir, none purchased nor used Thimet.

9 MR. HARRIS: All right.

10 THE WITNESS: Am I excused?

11 THE COURT: Yes, sir, you are excused.

12 (Witness was excused.)

13 THE COURT: Call your next witness.

14 MR. HARRIS: Mr. Morgan.

15

16 GEORGE D. MORGAN, JR., called as a witness on behalf

17 of Southern States Cooperative, Incorporated, having been

18 first duly sworn, was examined and testified as follows:

19

20 DIRECT EXAMINATION

21

22 BY MR. HARRIS:

23 Q Mr. Morgan, would you state your name, please,

24 sir?

25 A George D. Morgan, Jr..

Q. Your address, please, sir?

A. 6213 Three Chopt Road, Richmond, Virginia.

Q. Mr. Morgan, what is your occupation?

A. I am a bag manufacturer.

Q. Do you have a contract and have you had for some years to furnish bags for Southern States products?

A. Yes, sir.

Q. Do you furnish a bag -- I am going to show you -- do you furnish and manufacture, I might say?

A. What did you say? You'll have to speak up just a little, if you will, please.

Q. All right.

A. My ears are getting old, too.

Q. Where is your plant located?

A. In Richmond. Belleville and Moore Street, West Richmond.

Q. For how many years have you furnished bags to Southern States?

A. Since sometime during World War II.

Q. I am holding a bag in my hand. Do you recognize that?

A. Yes.

Q. Did you manufacture that bag?

A. Yes, sir, that is our little trademark down there on the corner.

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1 Q That is a logo, M-V?

2 A Right.

3 Q Would you describe the procedure of manufacturing

4 these bags from the time that you get the material, where

5 you get the material and right on up to the time that you

6 distribute that to Southern States?

7 A This bag is made from woven polypropylene ribbon.

8 It is manufactured by Nashville Mills, Nashville, Alabama.

9 They are a subsidiary of Plymouth Company, and, in turn,

10 they are a subsidiary of one of the big oil companies.

11 Q All right.

12 A They are the only manufacturers of this

13 particular piece of cloth.

14 Q Is this an oil-based product?

15 A Yes.

16 Q How does that come to you, that material?

17 A We buy this material in truckload lots along

18 with other materials from the same mill. It comes in 2,000

19 yard rolls that have about 10 bolts put on there per roll.

20 Q All right.

21 A We put it on a rather large printing press which

22 cuts the material, prints the material and folds the material

23 wrong side out. It would be like this and comes to the store.

24 We then sew this bag, again wrong side out, naturally.

25 It then goes to a turning machine that turns the bag right side

1 out. It then goes to the baler and is baled, wrapped, tied,
2 ready for shipment.
3 Q And at that time when it comes in, when it goes
4 out, that material, has it ever been used before?
5 A Never been used before.
6 Q Are these bags ever reused by Southern States?
7 A Not to my knowledge.
8 Q Do you ever have them come back in and clean
9 them up and ship them anywhere?
10 A No, sir.
11 Q In your production, is there ever any reason to
12 use Thimet, a chemical, Thimet?
13 A I don't even know what it is.
14 Q Any chemicals at all?
15 A No, sir. Just the ink is the only -- I don't
16 know whether you call printing ink a chemical or not.
17 Q Do you know what that is made of?
18 A It is an oil-based ink.
19 Q And you put that on the bag?
20 A That is right.
21 MR. HARRIS: I'd like to introduce that,
22 Your Honor. Well, we have one.
23 THE COURT: Do you want -- well, I think
24 counsel stipulated that this bag was the same as
25 the Exhibit -- what is that number of that Exhibit?

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1 THE CLERK: No. 1.

2 THE COURT: Plaintiff or Defendant No. 1?

3 Mr. Woodward, will you stipulate this bag he has

4 been referring to is the same type of bag?

5 MR. WOODWARD: Looks to be the same as the

6 one that was introduced by them yesterday.

7 THE COURT: That is stipulated, gentlemen.

8 All right. If you want it in, I'll let it in, Mr.

9 Harris, but we already --

10 MR. DELK: I agree because the bag I introduced

11 they got from Mr. Harris, and I presume he got all of

12 them from the same place.

13 THE COURT: All right. Answer these

14 gentlemen, Mr. Morgan.

15 MR. DELK: I have no questions.

16

17 CROSS-EXAMINATION

18

19 BY MR. WOODWARD:

20 Q. Mr. Morgan, just one brief question, please.

21 A. Yes.

22 Q. Do you have any mice or rats at your plant?

23 A. I would think perhaps we do.

24 Q. Do you control them chemically?

25 A. Not in the plant that I know of. We have Orkin,

I believe, on some sort of a contract. While I am not a thousand percent sure of where he works, we have a cafeteria and we are careful to see that he handles that and where else he may go, I don't know.

Q. That is really not part of your responsibility, though, is it?

A. Not personally, no, sir.

Q. In fact, you are head of Morgan Brothers Bag Company, are you not, sir?

A. That is right.

MR. WOODWARD: That is all I have. Thank you.

THE COURT: Any other questions, gentlemen? Mr. Morgan may be excused, gentlemen?

MR. WOODWARD: Yes, he can as far as I am concerned.

THE COURT: Mr. Harris?

MR. HARRIS: Yes, sir.

THE COURT: Mr. Morgan, you are excused. Watch your step going down.

(Witness was excused.)

THE COURT: Next witness.

MR. HARRIS: Dr. Poley.

GERALD POLEY, called as a witness on behalf of Southern States Cooperative, Incorporated, having been first duly

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1 sworn, was examined and testified as follows:

2

3 DIRECT EXAMINATION

4

5 BY MR. HARRIS:

6 Q Dr. Poley, would you state your name, please,

7 sir?

8 A Jerry Poley.

9 Q All right.

10 A Gerald Poley as given.

11 Q Where do you live, sir?

12 A In Richmond, Virginia.

13 Q Give us your address.

14 A 909 Ryder Road.

15 Q How old are you, sir?

16 A I am 39.

17 Q Dr. Poley, where are you employed?

18 A Southern States Cooperative.

19 Q In what capacity?

20 A Manager of research and technical services.

21 Q Research and technical services?

22 A That is right.

23 Q Is your office in Richmond?

24 A Yes.

25 Q Are you a chemist?

1 A. I am a nutritionist.

2 Q. A nutritionist? What is your educational

3 background, please?

4 MR. WOODWARD: I'll concede he is a nutritionist

5 qualified as such.

6

7 BY MR. HARRIS:

8 Q. Did you have occasion to look at a bag that

9 was presented to you or that you saw at the Virginia State

10 Laboratory, a Southern States bag, Pro-Blend bag?

11 A. Yes.

12 Q. Did you have occasion to look at the sewing marks

13 on the top of that bag?

14 A. Yes. We studied it there.

15 Q. Did you come to a determination as to whether

16 or not that bag had been sewn either once or twice?

17 A. Well, it's difficult to see exactly what the

18 situation would be, but it looked as if it had been sewn once.

19 Q. One time and not resewn at any time, right?

20 A. I don't think it was.

21 Q. Are you familiar with the chemical Thimet?

22 A. Only as we learned after this case had come up.

23 MR. HARRIS: That is all I have. Thank you.

24

25 CROSS-EXAMINATION

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1 BY MR. WOODWARD:

2 Q Dr. Poley, you indicated it was difficult to
3 determine whether it had been sewn once or twice. It is a
4 possibility it had been sewn twice, isn't it?

5 MR. HARRIS: Well, possibility.

6

7 BY MR. WOODWARD:

8 Q It is --

9 A It would be difficult to determine.

10 Q It is difficult to determine how many times it
11 has been sewn, isn't it?

12 A Right.

13 Q Really don't know whether it's been sewn once
14 or twice?

15 A That could have been determined, though, by
16 looking at it in a microscope. Maybe you could determine.

17 Q You didn't perform that test of it, though,
18 did you?

19 A No.

20 Q Are you familiar as a nutritionist -- and very
21 frankly, I don't know what a nutritionist is -- but as a
22 nutritionist, are you familiar with the composition of the
23 feed supplement Pro-Blend?

24 A Yes.

25 Q What are the components of Pro-Blend?

A. Oh, it would contain processed grain byproducts; it would contain dicalcium phosphates; it would contain calcium source, vitamin source, salt -- hum -- that would be about what it would contain.

Q. There are a number of components in Pro-Blend then?

A. Those that I enumerated on.

Q. Soy bean meal is one of them is it not?

A. That is right.

Q. Does Southern States manufacture soy beans or do they buy them from somebody who raises them?

A. We do not manufacture soy beans.

Q. So that comes into your plant from an external source?

A. It comes in from soy bean processors that process soy for the vegetable oil and for the meal that goes into the animal food chain. So you have material going in the animal and human food chain.

Q. So you buy soy beans, soy bean meal from processors?

A. Right.

Q. And soy beans, of course, are grown and raised on a farm?

A. Yes.

Q. Soy beans are raised as peanuts are raised?

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1 A Yes, I know what you are saying.

2 Q And then I believe there is also something called

3 bran, wheat middlings or bran, a common component?

4 A That is right. That comes from milling flour

5 and it is one of the materials that is left after the flour

6 is milled.

7 Q Where does that come from into your plant?

8 A From flour mills.

9 Q Shipped to you?

10 A That is right.

11 Q I assume because of the hundreds of thousands

12 of bags that you-all manufacture that you buy soy bean meal

13 in bulk and you buy wheat middlings or bran in bulk?

14 A That is true.

15 Q What else goes into it? Molasses, is that in

16 there?

17 A It could be in some, but very little molasses.

18 Q Where do you get the molasses from?

19 A People in the sugar cane processing business

20 process sugar.

21 Q That comes to you in bulk, also?

22 A That is right.

23 Q And is external to your plant?

24 A Yes.

25 Q I believe you stated dicalcium phosphate.

1 A. That is true.

2 Q. Where do you get that from?

3 A. That comes from people that are in the business

4 of processing dicalcium phosphate.

5 Q. In that particular case, I think it is an

6 internal product? That is an internal product?

7 A. I think so. I'm not --

8 Q. That is produced in bulk?

9 A. Yes.

10 Q. Then there are other mineral feed components?

11 A. Yes, as I have outlined.

12 Q. Where do you get the additional things from?

13 External to your plant?

14 A. That is right.

15 Q. Manufactured by others and shipped to you in

16 bulk?

17 A. Yes. There are some things that are shipped

18 in paper bags. For example, vitamin supplies are shipped in

19 paper bags and some of the trace mineral supplies are shipped

20 in paper bags. All the materials that we receive, whether

21 they are in bulk or in paper bags, are sampled at the plant.

22 Q. Dr. Poley, with the exception of dicalcium

23 phosphate, Southern States gains from other external sources

24 component parts which are used in the manufacture by Southern

25 States in Richmond of the Pro-Blend feed supplement?

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1 A. That is true.

2 MR. WOODWARD: That is all I have. Thank you,

3 Dr. Poley.

4

5 REDIRECT EXAMINATION

6

7 BY MR. HARRIS:

8 Q. Dr. Poley, do you use a policy on quality control

9 when the product comes into the plant, the mill?

10 A. Yes, sir.

11 Q. What is that?

12 A. Well, all of the materials that we receive are

13 sampled prior to being admitted to the plant. Then a sample

14 is then retained from the mill for 90 days after we receive

15 it. Some of these samples go beyond that, but all materials

16 are sampled so that we have a complete log of what we

17 received.

18 In addition to that, we sample all the materials that

19 we ship so that we have a complete log of everything that we

20 ship.

21 Q. And at any time in this sampling was there any

22 Thimet or Phorate in any food product?

23 A. No, there wasn't.

24 MR. HARRIS: That is all I have. Thank you,

25 sir.

MR. WOODWARD: Do you have any questions, Mr. Delk?

MR. DELK: No.

RECROSS-EXAMINATION

BY MR. WOODWARD:

Q Dr. Poley, you take a sample from a batch, do you not?

A Yes, sir, it is probed according to the practices that are outlined by good manufacturing practices.

Q Such as if a ton of bulk material comes in, you take a sample sufficient to be tested in your lab?

A That is right. It is a representative sample taken throughout it.

Q That is not in the entire load, however, is it?

A It is representative of the load as the result of the probing device and the method that we use. It would be representative of the load.

Q Something can get through your quality control analysis, however, can it not? If you just take a sample, say, of a ton of bulk material, that is possible, isn't it?

A I don't think so.

Q You don't?

A If it were evenly distributed, it would be

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1 difficult.

2 Q Suppose it is not evenly distributed?

3 A It would be by the time it got into the system

4 because the result of the mixing and batching and that sort

5 of thing does give you an even distribution. You would not

6 have a hot point because this material is blended in a two ton

7 mixer. It would be very difficult for all the material to

8 go through the system and only come out -- in fact, it is

9 impossible.

10 Q It is impossible?

11 A Yes. For all the material to go through the

12 system and come out all in one concentrated material.

13 Q You don't know whether some has gotten into

14 other bags besides one bag or not, do you, Dr. Poley?

15 A I think that you can conclude that something as

16 toxic as Thimet certainly would have given --

17 Q My question to you is that you don't know,

18 do you?

19 A I have not heard that any got into other bags.

20 Q Again my question: you do not know?

21 A Well, that is my answer.

22 MR. WOODWARD: That is all I have, Dr. Poley.

23 MR. DELK: I have no questions.

24 THE COURT: May the doctor be excused?

25 MR. HARRIS: Yes, sir.

THE COURT: Mr. Woodward;

MR. WOODWARD: I have no further questions of the doctor.

THE COURT: All right, Doctor. You are free to go. Thank you. Watch your step getting down.

(Witness was excused.)

THE COURT: Call your next witness.

MR. HARRIS: Mr. Crane.

JONATHON RICHARD CRANE, called as a witness on behalf of Southern States Cooperative, Incorporated, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Would you state your name, please, sir?

A Jonathon Richard Crane.

Q Your age?

A 30.

Q Where do you live, sir?

A I live in Richmond.

Q What is your educational background, sir?

A I have a bachelor's degree in animal science from Virginia Tech.

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1 Q. Just what is animal science? If you will just
2 describe it a little bit.
3 A. Well, animal science quickly is the study of
4 raising and caring for domestic animals.
5 Q. Including their food?
6 A. Right, certainly. Nutrition is a big part.
7 Q. Where are you employed?
8 A. I am employed by the Virginia Department of
9 Agriculture in Richmond as a state regulatory inspector.
10 Q. What does that mean, state regulatory inspector?
11 A. Well, quickly phrased, I perform inspections
12 which include the sampling of various agriculture
13 commodities that the state regulates, which include feed,
14 seed, fertilizer, pesticides, things of this nature.
15 Q. Do you have certain authority in your job?
16 A. Yes, sir.
17 Q. If not authority, then recommendations that you
18 can make?
19 A. We do on occasion make recommendations. Our
20 procedure includes sampling material, but also we do on-site
21 inspections under state law and also on a contract basis for
22 the Food and Drug Administration.
23 Q. That is the federal government?
24 A. Yes, sir, this is federal.
25 Q. Mr. Crane, what is your territory of inspection?

A. I inspect five counties west of Richmond, part of the City of Richmond itself, Hopewell and Colonial Heights.

Q. Now, is Southern States, the mill there that produces food on Hull Street, part of your territory?

A. Yes, it is.

Q. Does that come under your jurisdiction of Southern States?

A. Yes, sir, it does.

Q. How long have you been inspecting Southern States' plant? I assume you do inspect.

A. Yes, sir. Approximately three years.

Q. Three years? Which would be when?

A. April 1st of 1976; April 1st of 1976.

Q. Mr. Crane, have you brought with you the records of your inspections of the mill on Hull Street for Southern States?

A. Yes, sir, I have.

Q. Referring to those, would you advise the Court and jury how often you have inspected the Southern States mill plant on Hull Street during that period of time that you have been there?

A. Okay. Official FDA inspections under the contract are performed every two years; once every two years where we go through and do a complete inspection, including records and everything.

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1 Q That is the federal?

2 A Yes, sir.

3 Q All right.

4 A In addition to that, I'm in the mill approximately

5 once every five to seven working days for the purpose of

6 obtaining samples and to just do a visual inspection.

7 At this time if I see anything that is out of the

8 ordinary, either if the state or federal programs that were

9 in force, I can then either bring this to the attention of

10 management or if deemed necessary take action at that time.

11 Q How would you describe the record of the

12 Southern States operation?

13 MR. WOODWARD: I object to that, Your Honor.

14 THE COURT: I think he can tell what the record

15 is.

16 MR. WOODWARD: I'm sure they have a good record.

17 I don't see where it is probative. He is indicating

18 what he has done.

19 THE COURT: I'll allow him to tell what the

20 inspections were.

21

22 BY MR. HARRIS:

23 Q All right.

24 A I brought the last two official FDA inspection

25 reports with me.

1 Q When was the last one made?

2 A The last one is dated the 23rd of August, 1978.

3 Q How about before that?

4 A Before that? It took place on August the 10th

5 of 1976.

6 Q Now, they are FDA normal inspections, right?

7 A Yes, sir.

8 Q In addition to that, you go there every week?

9 A Yes, sir, I go there every week. I do an

10 informal inspection involving the entire plant about once

11 a month.

12 Q Now, what is the nature of the sampling that

13 you do? I wonder if I can take a minute to look at your

14 records, please.

15 Do you make any written records of your weekly visit?

16 A Yes, sir, we do. These are turned into our

17 coordinator once a week.

18 Q All right.

19 A That would show the places we go and the number

20 of samples we have taken.

21 Q Now, did you bring me those records?

22 A No, sir, I did not.

23 Q When you say "sampling", is that samples of

24 food and food mix?

25 A No. Well, of animal foods.

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1 Q Animal feeds?

2 A Yes. These are samples of commercial animal
3 feed that they have prepared or it may involve sampling of
4 ingredients that are arriving there.

5 Q I see here a report to Mr. Thomas Kirkpatrick.
6 Who is he?

7 A He is the mill manager.

8 Q At Southern States?

9 A At Southern States, Perry and Hull Streets.

10 Q And the report of September 26, 1978, will you
11 describe what that is?

12 A Okay. This is our final report and endorsement
13 done by -- in this case, Mr. Louis Gary, who is the assistant
14 supervisor of the feed and animal section of the Virginia
15 Department of Agriculture and Consumer Services.

16 It simply states to Mr. Kirkpatrick that I have performed
17 an official FDA inspection on his premises and it informs him
18 the nature of any deviations I have found and what he should
19 do to correct this.

20 Q In '78 were there any deviations?

21 A Yes, sir, I found two deviations.

22 Q What were they?

23 A At that point he is required under FDA regulations,
24 under the good manufacturing practices to assay all of the
25 feeds that he makes that contain any type of a medication.

1 In all cases this was not done.

2 Q What does that mean?

3 A That means all of the feeds that he makes that

4 might have an animal drug in it he must sample and send to a

5 laboratory to have it analyzed to be sure that drug is

6 contained in the amount that he guarantees on the label.

7 Q And these animal drugs are generally what?

8 A Well, Southern States mill in Richmond produces

9 23 different types of medicated feeds. I have a list of all

10 the drugs they have on hand, if you want that.

11 Q Do any of those include Thimet?

12 A No, sir.

13 Q Are you familiar with the chemical Thimet?

14 A Yes, sir, I am.

15 Q In your weekly reports, what is your general

16 observation of the operation there at that mill when you go

17 there from week to week?

18 A I'm not sure I --

19 Q If you were to describe to someone that operation

20 there, the quality of it.

21 A I would call it efficient. Their quality control

22 is very intense. They do a daily inspection themselves on

23 the cleanliness of the mill, and this is done every morning.

24 On some occasions I accompany the plant superintendent

25 while he does this and go along with him.

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This also will include my inspection when we just kind of do it together and I can point things out to him at that time.

Q Has any sampling that you have ever taken included any Thimet or any Phorate poisoning of any kind?

A No, sir; no, sir.

MR. HARRIS: Answer counsel.

MR. DELK: I have no questions.

THE COURT: Mr. Woodward?

CROSS-EXAMINATION

BY MR. WOODWARD:

Q Your inspection is periodic?

A Yes, sir.

Q You say Southern States has its own quality control?

A Yes, sir.

Q Quality control is designed, is it not, to be reasonably certain of the product that is put into the mainstream of commerce?

A Yes, sir.

Q Quality control costs money?

A Yes, sir.

Q And at some point if a business is to make a

1 profit, quality control is outweighed by the economic factor,
2 is it not?
3 MR. HARRIS: Wait a minute. No showing
4 in this of any such thing. I object to it.
5 THE COURT: I don't know. He hasn't qualified
6 as an economist --
7 MR. HARRIS: Businessman --
8
9 BY MR. WOODWARD:
10 Q Well, are you familiar with quality control
11 enough to answer the question?
12 MR. HARRIS: Your Honor, he is trying to
13 bring it in by inference. He has no proof whatsoever.
14 I object to it.
15 THE COURT: Well, he has testified.
16 MR. WOODWARD: When they shoot pigeons, they
17 also object.
18 MR. HARRIS: I object to counsel, too, right now.
19 THE COURT: Gentlemen -- gentlemen --
20 MR. HARRIS: I'm sorry, Judge.
21 THE COURT: I'll allow you to question him
22 about the quality control, Mr. Woodward, that he
23 testified to. As to the economic impact, you'll have
24 to qualify him as an expert to answer those questions.
25

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1 BY MR. WOODWARD:

2 Q Do you remember the question I asked?

3 A Restate it.

4 Q All right, I'll restate it. Before you answer,

5 tell me whether you are in a position to answer it.

6 My question to you is this: quality control at some

7 point has to be outweighed by the economic factor at the

8 expense of quality control?

9 MR. HARRIS: Wait a minute.

10 MR. WOODWARD: That is my question and

11 statement.

12

13 BY MR. WOODWARD:

14 Q Are you able to agree or disagree or to answer?

15 A I really can't answer that because we do not

16 enter into economics whatsoever. We are strictly regulatory

17 in nature.

18 Q So you are just familiar with the quality control

19 itself?

20 A Yes, sir.

21 Q All right. In spite of quality control, things

22 are introduced into the mainstream of commerce, are they not,

23 which are not supposed to be in the product?

24 A I suppose that is so.

25 Q It happens, doesn't it?

MR. HARRIS: Hasn't happened in this case, Mr. Woodward. No proof and you know it.

THE COURT: Well, I don't know --

MR. HARRIS: Because it can happen --

THE COURT: He can answer the question.

BY MR. WOODWARD:

Q Are you familiar that that happens?

A Not specifically, no, sir. I don't know what you are referring to.

Q My question to you is that as far as quality control --

A Yes, sir.

Q -- Coca-Cola Company has quality control, doesn't it?

A I assume they do.

Q Things get in their bottles of Coke?

MR. HARRIS: I object to that. That has nothing to do with this case whatsoever.

THE COURT: I sustain that objection.

BY MR. WOODWARD:

Q My question to you, since you engage in quality control, that in spite of quality control, is it not true that things get into the mainstream of commerce in spite of that

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1 quality control?

2 MR. HARRIS: Now, he has answered that.

3 That is possible.

4 THE COURT: Well, just a second. Make the

5 objection, gentlemen, and don't let counsel testify.

6 Make your objections if you have an objection. State

7 the reason.

8 MR. HARRIS: I object to it, sir. It is

9 irrelevant.

10 THE COURT: I wouldn't think it is irrelevant

11 when the question of quality control is an issue.

12 MR. HARRIS: Talking about Coca-Colas.

13 THE COURT: The question is does he know that

14 things get into commerce in spite of quality control.

15 If he knows, he knows; if he doesn't, he doesn't.

16

17 BY MR. WOODWARD:

18 Q Do you know that that happens?

19 A Well, yes, sir, I'd say because there are

20 violations of our commercial feed law that happen.

21 Q Does that happen generally is my question to

22 you, sir.

23 MR. HARRIS: It has happened in this case?

24

25 BY MR. WOODWARD:

1 Q Well --

2 A Define generally.

3 THE COURT: I sustain it.

4 THE WITNESS: Can you define generally

5 for me?

6

7 BY MR. WOODWARD:

8 Q You are in quality control?

9 A Yes, sir.

10 Q In quality control, I feel certain, and I'll

11 ask you: are you familiar with quality control generally?

12 A Yes, sir.

13 Q My question to you again, sir, is do not items

14 get into commerce in spite of good quality control practices

15 that should not get into commerce?

16 A This is possible, yes.

17 MR. WOODWARD: I have no further questions.

18 Thank you.

19 THE COURT: Any further questions of this

20 witness?

21 MR. HARRIS: No, sir.

22 THE COURT: Do you need this witness any

23 further, gentlemen?

24 MR. HARRIS: No, sir.

25 THE COURT: Mr. Woodward?

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1 MR. WOODWARD: No, sir.

2 THE COURT: You are free to go.

3 (Witness was excused.)

4 THE COURT: Let's take about a five-minute

5 recess at this time, gentlemen. We'll reconvene in

6 about five minutes.

7 (A short recess was taken, after which the

8 trial continued as follows:)

9 MR. HARRIS: Mr. Daughtry, take the stand.

10 I just want to identify this with him, Your

11 Honor.

12 THE COURT: He has been sworn?

13 THE WITNESS: No, sir.

14

15 R. A. DAUGHTRY, called as a witness on behalf of

16 Southern States Cooperative, Incorporated, having been first

17 duly sworn, was examined and testified as follows:

18

19 DIRECT EXAMINATION

20

21 BY MR. HARRIS:

22 Q Mr. Daughtry, state your name, please.

23 A R. A. Daughtry.

24 Q Your occupation?

25 A Inspector, Virginia Department of Agriculture,

1 Consumer Service.

2 Q At my request did you perform a service for me

3 about five minutes ago?

4 A Yes, sir, I did.

5 Q What was that?

6 A I removed a quantity of material that you had

7 in that jar from a Thimet bag outside in front of the steps

8 of the courtroom here.

9 Q Was that Thimet bag unbroken when you --

10 A Yes, sir, it was unbroken.

11 Q All right, sir.

12 MR. HARRIS: Your Honor, I'd like to introduce

13 this. I don't know how to go about this. Maybe

14 Mr. Daughtry can tell us --

15

16 BY MR. HARRIS:

17 Q It is dangerous, isn't it, sir?

18 A Yes, sir.

19 MR. HARRIS: I understand that some people

20 are allergic to it and can cause a reaction, Your

21 Honor. I don't want to do anything here that is

22 going to --

23 THE COURT: I'll allow it to be introduced,

24 gentlemen. I'll leave it up to the jury. If this

25 gentleman wants to give some advice concerning it,

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1 that is up to him.

2 THE WITNESS: The only thing I would say is

3 it is a potent chemical, and, of course, you can take

4 the cap off the container and you don't have to get

5 too close to it before you can smell it. Some people

6 may be allergic to it. I'm not an expert in that field.

7 I would not know who would be allergic.

8

9 BY MR. HARRIS:

10 Q Would you describe the smell? Does it smell

11 like anything else that you --

12 A It is very pungent, very offensive, as other

13 people have stated.

14 Q Can you smell two and a half pounds of that in

15 100 pounds of Pro-Blend?

16 A I can't --

17 MR. WOODWARD: I object to that, Your Honor.

18 He can't answer that.

19 THE COURT: He said he can't.

20 THE WITNESS: I can't.

21 THE COURT: All right, sir. I'll allow this.

22 You stipulate that it is Thimet or he has indentified

23 it as such. This container, and it is in a Taster's

24 Choice bottle, will come in as Defendant Southern States

25 Exhibit No. 2. This is Southern States Exhibit No. 2,

the container as previously described.

THE WITNESS: Your Honor, I would suggest that the container be thoroughly labeled as far as Thimet product in there so there will be no question as to its being coffee.

THE COURT: I would suggest that you get a label and place on it that it is insecticide, dangerous material.

MR. HARRIS: You have got a good point. I think we have got some masking tape that we can put around it.

(Glass jar containing Thimet was received in evidence and marked as Defendant Southern States Cooperative, Incorporated Exhibit No. 2.)

MR. HARRIS: Mr. Kirkpatrick.

MR. WOODWARD: I have one question.

CROSS-EXAMINATION

BY MR. WOODWARD:

Q. Mr. Daughtry, that is undiluted Thimet?

A. Yes, sir.

Q. Not mixed in with anything?

A. No.

THE COURT: Do you need this witness any further?

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MR. HARRIS: No, sir.

THE COURT: He was in the courtroom, gentlemen.

MR. WOODWARD: I have no objection.

(Witness was excused.)

THE COURT: Call your next witness, Mr. Harris.

MR. HARRIS: Mr. Kirkpatrick.

THE COURT: I don't guess I'll have to tell you to watch your step.

MR. KIRKPATRICK: No, sir.

THOMAS M. KIRKPATRICK, JR., called as a witness on behalf of Southern States Cooperative, Incorporated, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REED:

Q Mr. Kirkpatrick, state your full name for the record and the jury.

A Thomas McDuffie Kirkpatrick, Jr..

Q How are you employed, Mr. Kirkpatrick?

A I am employed as mill manager for the Southern States Richmond feed mill.

Q How long have you been in that position?

A Since September of 1972.

1 Q. Can you tell us something about your educational
2 background?
3 A. Well, I was born and raised on a large, livestock
4 farm in Rockford County. After high school I attended Ferrum
5 College and graduated from Ferrum College in a general
6 agriculture two-year course.
7 From there I went into farming with my father and from
8 there I went with Southern States Cooperative in 1962.
9 Q. What was your first job, sir?
10 A. I was the manager trainee with Southern States
11 Cooperative in their retail distribution system.
12 Q. Subsequent to that?
13 A. After six months of training, I became a field
14 representative for the Southern States Charlestown Cooperative
15 in Charlestown, West Virginia, and worked selling directly
16 to the farmers all the products that Southern States
17 manufactures and distributes to farmers. I did that for
18 about two years and then I was made manager of that
19 cooperative.
20 Q. All right.
21 A. I managed the cooperative there for about two
22 and a half years and then in 1968 I was promoted to the
23 retail operations department of Southern States Cooperative
24 in Richmond, Virginia, as project supervisor.
25 For several years I worked with the manager of retail

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1 construction, supervising the construction of various types
2 of retail facilities for Southern States.
3 From there I was promoted into the position of
4 construction of petroleum equipment manager for Southern
5 States retail operation and I was in that job for two and a
6 half years. In that job I purchased and specified all the
7 rolling equipment for Southern States and also worked in the
8 construction of LP gas and petroleum plants.
9 From there I was promoted into the manager of the
10 Richmond feed mill.
11 Q All right, sir. As the plant manager of the
12 Richmond feed mill, are you familiar with the entire operation
13 carried on at the mill?
14 A Yes.
15 Q And all aspects of its operation?
16 A Yes, sir.
17 Q As plant manager you are in full control of the
18 operation and have full authority to determine how they take
19 place?
20 A Yes, sir. It is my responsibility to make sure
21 that feed is produced in accordance with the policies and
22 procedures as set forth by Southern States.
23 I am to control personnel, quality, production,
24 maintenance, all the aspects of the feed mill and property.
25 Q All right, sir. Do you have any quality control

1 inspector under you?

2 A. I have a quality control supervisor who reports

3 directly to me and no one else.

4 Q. What is his name?

5 A. Mr. David Jones.

6 Q. Are you aware of Mr. Jones' qualifications for

7 the position that he holds?

8 A. Mr. Jones is a graduate of Penn State and he

9 came to Southern States as a manager trainee and was in retail

10 distribution at several different retail locations prior to

11 coming to the feed mill where he was put into quality control

12 and trained for quality control.

13 Q. All right, sir.

14 A. And he has attended special courses, attended

15 the state university in Manhattan, Kansas, which is the only

16 university in the United States that offers a degree in

17 milling process.

18 He has been through an intensive three-week program

19 at Kansas State besides the training he has gotten through

20 our own personnel.

21 MR. WOODWARD: If Mr. Jones is going to be

22 a witness, I'll be glad to assume his qualifications

23 when he so states them. This seems to be redundant

24 to me to ask him about the other man.

25 MR. HARRIS: He was just establishing what the

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1 quality control man does as his qualifications.
2 That is all.
3 MR. WOODWARD: I'd like to see him, also,
4 Your Honor.
5 THE COURT: All right, sir. I'll allow him
6 to state -- he has stated what the quality control
7 supervisor's qualifications are. Go ahead.
8 MR. REED: All right, sir.
9
10 BY MR. REED:
11 Q Do you purchase all your bags from Morgan Brothers?
12 A Yes, sir.
13 Q Bags used for Pro-Blend 50.
14 A Yes, sir.
15 Q Since you became plant manager in 1972, has
16 Southern States ever used reused bags for Pro-Blend 50?
17 A No, sir.
18 Q When retailers come to pick up Pro-Blend 50
19 from the mill, do you ever allow them to load feed such as
20 Pro-Blend 50 onto a truck containing insecticide?
21 A No, sir.
22 Q Why not?
23 A Well, it is against federal regulations and
24 also against Southern States' policy. It is just not good
25 procedure to mix chemicals and feed.

Q Mr. Kirkpatrick, I'd like to have you describe the procedure by which Pro-Blend 50 is manufactured and the starting point, of course, is the entry of the grain and other ingredients into the plant. Would you tell us how the Southern States mill -- the ingredients that go into Pro-Blend 50?

A. Well, 95% of our ingredients comes in by rail. They are unloaded into a hopper that has a conveyor in the bottom. It is conveyed into a bucket elevator and taken to the top of the mill where it is distributed through a series of screw conveyors into the proper bins.

Our main ingredients are stored in bulk. Then any minor elements that we put in arrive at the mill in bags and these are inventoried in bags.

Q All right, sir. From there, what is the next step?

A. When we get an order for Pro-Blend 50, we then set production up and the ingredients that are inventoried in bulk are conveyed from the bottom of the bins that they are stored in into a hopper scale and weighed up.

After all the bulk ingredients are weighed up, they are released into one of two two-ton mixers which we have in the mill. The bulk ingredients are put into the mixers and then at that time any minor minerals, anything that is not in bulk are handweighed on a scale and dumped into the mixers.

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1 After everything is in there, a timer is put on and
2 the Pro-Blend 50 would be mixed four minutes in a horizontal
3 mixer with ribs that actually take the feed back and forth
4 very quickly through the mixer so it is blended together.
5 From there it is released and goes through a screw
6 conveyor to a bucket elevator, up through what we call a
7 garner. It is a small bin. It goes through the garner, down
8 into a liquid agitator and if any liquid such as molasses is
9 put onto the feed, that is incorporated into the feed and
10 then it goes into a bucket elevator up to our bagging floor
11 where it is bagged and sewed and put out on the floor for
12 distribution.
13 Q Does the entire two tons that is in the mixer
14 continue through this process?
15 A Yes, sir.
16 Q Now, you said it goes into the bucket up to
17 your baggers. The baggers, are they on the top floor of the
18 plant?
19 A The baggers are on what we would call the third
20 story of the plant. The feed is actually conveyed higher
21 than the bagger so it will flow by gravity down into the
22 holding bin that goes into the bag itself, the spout that
23 goes into the bag itself.
24 Q How do the bags such as this bag get up to the
25 baggers?

A. The bags come to us from Morgan Bag Company in bales of 1,000. They have a wire band around them and they'll weigh in the neighborhood of -- I think approximately about four to 500 pounds.

We'll take them and pull them up to the scale floor on a hoist, an electrical hoist with a cable on it. They are then taken off of the hoist and inventoried on the scale, of course, for use.

Q. Are they unbanded on the scale floor?

A. On the scale floor, yes.

Q. How many bags did you say come in one bale?

A. Roughly a thousand.

Q. All right, sir. You described the piece of machinery that dumps the mix, the Pro-Blend 50 into each individual bag as what? What did you call it, the thing that --

A. A packer.

Q. A packer?

A. Yes, sir.

Q. Does this packer have basically a chute that the Pro-Blend 50 drops down out of?

A. Yes, sir.

Q. These bags are --

A. The bags are held by a clamp. It has an air operated cylinder on it and you control it with a foot pedal

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1 and when they press the pedal it closes the clamp on the bag.
2 When the bag is filled, it automatically drops off.
3 Q So a bagger then would have a bale of bags next
4 to him and would take one and put it onto the loader, is
5 that correct?
6 A Yes, sir, that is basically correct. He'll not
7 have a whole bale because we use different size bags for
8 different products, so he'll probably take -- if he has got
9 100 bags to bag off one product, he'll probably take roughly
10 100 bags and lay them down beside him and put that on the --
11 Q In any event, he clamps it on?
12 A Right.
13 Q And he pushes a pedal?
14 A And the feed automatically drops 100 pounds into
15 the bag. It is released onto a conveyor and goes into a
16 sewing head where it is stitched and sewed.
17 Q What is the distance that a bag, after it drops
18 down, travels to the sewing stitcher?
19 A Well, two men -- there is a packer operator and
20 a sewing machine operator. They roughly stand shoulder to
21 shoulder, so probably three to four feet, I would say.
22 Q All right.
23 A From the time it drops off the packer until it
24 goes into the sewing head.
25 Q Then a new bag, as you say, drops down onto the

1 conveyor and moves into this sewing machine?

2 A. Yes, sir.

3 Q. And the sewer, what is his responsibility?

4 A. The sewer's responsibility is to take a tag

5 for the product and start -- start the bag through the sewer

6 and after it is about halfway through, he'll put a tag in

7 the line of thread and it sews the tag identifying the

8 product onto the bag. It passes through the sewing machine

9 and then he cuts the string with an automatic cutter on the

10 end.

11 The bag continues on through a set of guides and drops

12 by gravity down onto another conveyor that is on the next

13 floor. This takes and distributes the bag up to the warehouse

14 to whichever location we want it to come off the main line.

15 Q. On this lower floor you are talking about, is

16 the Pro-Blend 50 stacked?

17 A. It is stacked. The way our warehouse is set up,

18 it is a two-story operation, so we are not palletized. We

19 take it and stack it on a hand truck and we stack it seven

20 high, 700 pounds to the stack. We put it in rows.

21 Q. The next thing that would happen to a stack of

22 Pro-Blend 50 bags is what?

23 A. The next thing that would happen would be that

24 someone would order some and once an order is entered, they

25 come in to pick it up, then someone takes the order out and

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1 gets the Pro-Blend 50 off the floor and loads it onto the
2 truck.
3 Q. So I take it to mean that it is moved directly
4 from the stack to the truck?
5 A. Yes, sir.
6 Q. What kind of stitch is sewn into these bags?
7 A. Well, it is similar to a regular sewing stitch
8 that you have on your clothes. We use two threads; one is
9 what we call a looper and the other one is a stitch. Also
10 incorporated into this is what we call a ripcord. This is
11 a big cord that has the stitch right down the middle of it
12 so that when the patron gets the bag of feed, all he has to
13 do to open it is to grab the string and pull and the bag will
14 come open due to having a big cord on it.
15 Q. Is it possible to open up a corner of the bag
16 and not the whole thing?
17 A. It is possible to open a corner, but it is
18 impossible not to detect it.
19 Q. I guess I should say if someone pulled this
20 ripcord, as you call it, and opened up a corner, is there
21 any way he could close it back up, stitch it back?
22 A. If he had a portable sewing machine, he could,
23 or if he just took the length of ripcord on the end of the bag
24 and just looped it around, you know, made a knot of it, he
25 could tie the corner of the bag that way.

1 Q In any event, the entire two tons that was in
2 this mixer --
3 MR. WOODWARD: I object to his leading questions.
4 He is leading the witness, Your Honor. He has already
5 asked the questions. I haven't objected to the leading
6 so far, but I object to the leading nature of the
7 question.
8 THE COURT: All right, sir. Ask him questions.
9
10 BY MR. REED:
11 Q Mr. Kirkpatrick, does the entire two tons that
12 was in the mixer that is conveyed up to the bagger, does that
13 entire amount -- is it bagged all at the same time? You know,
14 in consecutive bags?
15 A There is nothing else bagged but that until it
16 is finished. It is in the system, and you'd have to finish
17 running that out before you run anything else through the
18 system. Only one product can go through the system at one
19 time.
20 Q And you run the entire product?
21 A Yes, sir.
22 Q Do you?
23 A Because until we get the product out of the
24 system, we cannot run any other feed.
25 Q How long has the bagger and sewer been working

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for you?

A The bagger is a 10-year plus employeee and the sewer is 5 or 6 years.

Q All right.

A Whenever they are sick or on vacation or whatever, anyone who replaces them as a substitute is generally what we call a utility man. Most of those men have 10 years or so.

Q The entire contents of the mixer being bagged basically at the same time, are those contents uniform from bag to bag?

MR. WOODWARD: I object to that question, Your Honor. He can state what, maybe, he thinks it is, but unless he inspects a particular lot, he cannot say.

THE COURT: I wouldn't think that he'd be in position to say, gentlemen. I think that is something that --

MR. REED: Beg your pardon?

THE COURT: How is he in position to answer the question? Uniform as to what?

MR. REED: To their ingredients.

MR. WOODWARD: I still object to the question.

THE COURT: With respect to the ingredients, I don't think he can testify to that. If he makes

1 inspections on the ingredients, I assume that he can
2 testify to it. I think you'd have to qualify him
3 before he can answer the question.
4 MR. REED: That is all I have.
5 THE COURT: Do you have any questions?
6 MR. DELK: Yes, sir, I have some.
7
8 EXAMINATION BY MR. DELK:
9 Q Mr. Kirkpatrick, mixing this feed is like mixing --
10 to relate to the jury, like mixing a huge batter of cake mix,
11 isn't it?
12 A Yes, sir.
13 Q Except it is a 2,000 pound batch of cake mix
14 instead of one little bowl? 4,000 pounds, two tons?
15 A Two tons.
16 Q What type of container are the bulk materials
17 and also bag materials mixed in? Describe the container.
18 A The container is a vessel which is made out of
19 sheet metal and is totally enclosed. It is in a U-shape, and,
20 of course, it has a drive on it, a shaft that goes through
21 the center of it and bearings on each end with a motor and
22 a chain drive that turns it.
23 On the spindle that goes through the middle, which is
24 about a six-inch spindle, you have a series of rods that come
25 out and on the ends of the rods right next to the outside edge

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1 of the vessel are a series of ribbons that intertwine back
2 and forth in each direction. This has a mixing effect when
3 it is running, it is turning at a rapid pace.
4 Q Does it rotate around the spindle?
5 A It is horizontal and it rotates and when you
6 have the ingredients in it, it has a ribbon type of effect
7 as far as the mixing. It makes the product go from one end
8 of the mixer to the other.
9 Q Well, what I'm trying to get at, my next question
10 would be how many mixing elements or sections -- for instance,
11 the normal Sunbeam mixer may have four blades on the mixer.
12 How many blade elements does that have?
13 A There is probably in the neighborhood of 25
14 spindles, and on those spindles I would say there is 8 to 10
15 sections of ribbon that are about --
16 Q On each spindle?
17 A No. The spindle is actually sticking out from
18 the -- from the main spindle.
19 In other words, you have a horizontal shaft
20 going through, and the spindles that go out support ribbons
21 that go around to make it --
22 Q Are all the elements rotating around the shaft?
23 Is that correct?
24 A Right. It is quite a complex thing. It is
25 really hard to describe.

Q. Would you care to make a drawing of it?

A. I can attempt to. I'm not an artist, but I can attempt to.

MR. WOODWARD: Your Honor, this is the second day of the trial. If it is that complex and he does not have it already, I don't see how in freehand he is going to be able to draw it.

THE WITNESS: It is a --

BY MR. DELK:

Q. This is mixed for four minutes?

A. Anything over 20% protein, that is the case.

Q. Is that the case in Pro-Blend 50?

A. It is 50%, so it is mixed four minutes.

Q. Would you describe the completeness of the mixing process as the disbursement as to all of these ingredients through the entire batch?

MR. WOODWARD: I object to that question. He is asking this gentleman to testify as to what he may understand, but what we are talking about is a --

THE COURT: I'm going to --

MR. WOODWARD: Produced the Pro-Blend that got in the bag that the state chemist brought yesterday, and unless he went down and saw that particular

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1 operation, he is not able to testify.

2 THE COURT: I am going to let him testify,

3 Mr. Woodward, concerning what they normally do.

4 MR. WOODWARD: What the normal procedure is.

5 THE COURT: I'll allow him to testify as to

6 exactly how it is mixed. Unless he has run an analysis

7 on it, I don't think he can say what is mixed here and

8 there, but he can give a general description of how

9 it is done, yes, sir. I'll allow him to do that.

10

11 BY MR. DELK:

12 Q All right, sir.

13 A When your ingredients are dumped into the mixer,

14 within 30 seconds, if he has a different colored ingredient,

15 if you have a dark ingredient and a light ingredient, within

16 30 seconds from the time it comes in there, the mixer is

17 so thorough, these things have been incorporated so that the

18 product is in one color.

19 If this gives you an idea of how thoroughly the mixer

20 is doing its job, it is very swift and it is nothing slow

21 about the thoroughness, about the way the mixer will blend

22 the product together. Is that what you were asking?

23 Q Yes, sir. Are you familiar with the mixing

24 process resulting in remote concentrations of one particular

25 ingredient in one area of this entire 4,000 pound batch?

1 A Sir, in this mixer, there is no way.

2 MR. WOODWARD: I object to the question,

3 Your Honor. He is testifying just as in opening

4 statements, it cannot happen; well, it did happen.

5 What he is asking him --

6 MR. DELK: That is the issue, Your Honor.

7 THE COURT: Just a second. Let him make

8 his objection.

9 MR. WOODWARD: What he is testifying to now

10 is just the general operating procedure, and again

11 my objection is not to the general operating procedure

12 but what happened when they ran the batch here.

13 THE COURT: He testified to the general

14 operating procedure, what the results of that are.

15 MR. DELK: I ask the Court to instruct the

16 jury that Mr. Woodward's observations about what

17 happened and what did not happen are not evidence

18 and not to be considered by them.

19 MR. WOODWARD: All I'm saying --

20 THE COURT: I didn't think he was testifying

21 nor did you. Let's go on, gentlemen.

22 MR. DELK: Well, the jury needs to be reminded.

23 THE COURT: This is all a matter of argument

24 over a motion. Let's proceed with the questions of

25 the witness.

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1 BY MR. DELK:

2 Q Are you familiar with your experience as manager
3 of the Southern States mill on Hull Street in Richmond of
4 this mixing process resulting in remote concentrations of
5 a particular ingredient in a small, concentrated area within
6 a batch mixture of that sort?

7 A (Witness shaking head negatively.) You don't
8 have small concentrations in this mixer.

9 Q Once the mixing process is completed and the
10 batch, we'll call it, has been elevated to the bagging floor,
11 approximately how long does it take to bag this 4,000 pound
12 mixture in 100 pound bags?

13 A In 100 pound bags we can bag on an average of
14 10 to 12 bags a minute.

15 Q How many 100 pound bags will contain this 4,000
16 pound mixture?

17 A 40.

18 Q How long does it take the bags?

19 A Roughly 3 or 4 minutes.

20 Q What is the likelihood of a concentrated
21 component of this ingredient appearing in one bag and not
22 in other bags loaded from the same batch?

23 MR. WOODWARD: I object to that.

24 THE COURT: I sustain the objection.

25

BY MR. DELK:

Q Are you familiar in your experience as plant manager of the Southern States feed mill to have isolated components of a batch mixture to appear in one bag of that lot and not in other bags?

THE COURT: He has answered that, Mr. Delk. He has answered that question once, I think.

MR. DELK: All right, Judge.

THE COURT: I thought he had, anyhow. You asked him -- that was the question before the one you just asked.

MR. DELK: I asked him what the likelihood was. This one I'm asking him if he has knowledge of it ever happening.

THE COURT: All right, sir.

BY MR. DELK:

Q Do you have knowledge of that ever happening?

A No, sir, I do not.

MR. DELK: That is all I have.

CROSS-EXAMINATION

BY MR. WOODWARD:

Q Mr. Kirkpatrick, how many people work at your

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1 plant in Richmond?

2 A We have a total of -- at this time you are talk-

3 ing about?

4 Q Let's say December of '77.

5 A Well --

6 Q Approximately.

7 A I would say approximately 35 hourly people and

8 about 8 salaried people.

9 Q Did you run the batch that the bag that came

10 from the state chemist, came from Mr. Doggett's farm was run?

11 A Sir, if I had to run the batch that that came

12 in, it wouldn't be anybody else at the plant.

13 Q So you didn't run the batch?

14 A No, sir.

15 Q Mr. Kirkpatrick, you mentioned Mr. Jones was

16 engaged in quality control.

17 A Yes, sir.

18 Q He is here to testify as a witness?

19 A No, sir.

20 Q He is not?

21 A No, sir.

22 Q Who is Mr. William McAllister?

23 A Mr. McAllister is the manager of quality control

24 for the Southern States feed division, which incorporates all

25 of our mills, not just Richmond.

1 Q Is he here to testify as a witness?

2 A He is here.

3 Q Is he going to testify? He is here to testify?

4 A He is here.

5 Q Now, he would then be more familiar with the

6 quality control than you?

7 A He is in charge of quality control; my

8 responsibility is to see that the policies that are set by

9 Dr. Poley and him are carried forth. Under my supervision

10 Mr. Jones coordinates with Mr. McAllister in seeing that all

11 aspects of quality control are carried forth.

12 Q So Mr. Jones is your quality control man under

13 you?

14 A Under me and in turn he works directly with

15 Mr. McAllister more than I do.

16 Q Mr. Jones is not here?

17 A He is not here.

18 Q Is he available in Richmond?

19 A Yes, sir.

20 MR. HARRIS: Who was that, Mr. Woodward?

21 MR. WOODWARD: Mr. Jones, who was qualified

22 as to what he does and all that, but evidently he

23 is not here.

24

25 BY MR. WOODWARD:

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1 Q Now, Mr. Kirkpatrick, do you generally understand
2 quality control in your plant?
3 A Yes, sir.
4 Q What you are really testing for is the nutritional
5 value of what you are producing for public consumption?
6 A That is right.
7 Q Are you familiar with infrared testing,
8 mass --
9 A Yes, sir.
10 Q Mass speck analysis?
11 A Yes, sir.
12 Q Who conducts that at your plant?
13 A The ultraviolet inspections, Mr. Jones might.
14 The mass chromonology, it is not performed at the Richmond
15 mill. It is performed at our lab in Baltimore. That is a
16 very sophisticated piece of equipment.
17 Q And mass speck analysis, is that also in
18 Baltimore?
19 A Yes, sir.
20 Q Do you send a sample of every batch of Pro-Blend
21 to Baltimore to be tested by your lab there?
22 A No, sir.
23 Q You do not, in fact -- the tests that relate to
24 you, the tests used for Phorate --
25 A Num -- sir, I'm not qualified to answer that.

1 Q My question to you, in your plant in Richmond
2 you do not test for Phorates?
3 A No.
4 Q You do not?
5 A No, sir.
6 MR. WOODWARD: I have no further questions.
7 THE COURT: Anything further?
8 MR. DELK: No, sir.
9 MR. HARRIS: You can come down.
10 THE COURT: Do you need this witness any
11 further, gentlemen?
12 MR. HARRIS: No, sir. Well, he is sitting
13 here.
14 THE COURT: All right.
15 (Witness was excused.)
16 THE COURT: Call your next witness.
17 MR. HARRIS: Mr. McAllister.
18 THE COURT: Everybody on the jury is all right?
19
20 WILLIAM McALLISTER, called as a witness on behalf of
21 Southern States Cooperative, Incorporated, having been first
22 duly sworn, was examined and testified as follows:
23
24 DIRECT EXAMINATION
25 BY MR. HARRIS:

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1 Q Mr. McAllister, would you state your full name?
2 A William McAllister.
3 Q How old are you, sir?
4 A 62.
5 Q Your educational background?
6 A Chemistry. Graduated West Virginia University.
7 Q Are you an employee of Southern States
8 Cooperative?
9 A Yes, I am.
10 Q In what capacity?
11 A As manager of quality control in the plant,
12 feed mill.
13 Q Manager of quality control? Actually, where is
14 your office? Is that in the mill or in the main office?
15 A It is in Richmond, the main Richmond office.
16 Q How long have you been with Southern States,
17 Mr. McAllister?
18 A 37 years.
19 Q What was your first job?
20 A As a chemist in the Baltimore laboratory.
21 Q Very briefly run through your jobs, if there
22 are not too many.
23 A Chemist, analytical chemist. Then following
24 in three or four, five years as a laboratory manager, and then
25 after another six or eight years, into the quality control

responsibility.

Q When you say that you are the manager of quality control, is that at the Richmond plant? What street is it?

A It is --

Q Hull Street?

A Right. It deals with quality control procedures in all of the Southern States mills. By that I mean -- hum -- it aids in production, employees to supervision.

Q All right. Is yours more of an administrative job than actually quality control as such?

A Definitely.

Q All right, sir. Are you familiar with the product of Pro-Blend?

A Yes, reasonably so.

Q Were you, in fact, three years ago, let's say?

A Well, I don't have the formula in my mind, but I think I have it now and the procedures used in its production.

Q Could you describe for us briefly, and I realize this may be redundant, what has been touched by others, but the procedure of making Pro-Blend in the Richmond mill?

A The ingredients are weighed out through a --

MR. WOODWARD: Your Honor, I object to any reason other than I thought Mr. McAllister was called

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1 by them and went through all this --

2 THE COURT: You mean Mr. Kirkpatrick?

3 MR. WOODWARD: Excuse me, Mr. Kirkpatrick.

4 I'm sure it's repetitious.

5 THE COURT: Stipulate what Mr. Kirkpatrick

6 said, Mr. McAllister --

7 MR. HARRIS: Well, do it again.

8 THE COURT: -- corroborates?

9 MR. WOODWARD: What generally is supposed to

10 occur.

11 MR. HARRIS: What does occur; not supposed to

12 occur.

13 THE COURT: The general procedure for mixing

14 Pro-Blend, you'll stipulate that he --

15 MR. WOODWARD: The general procedure I'll

16 stipulate to.

17 THE COURT: All right.

18

19 BY MR. HARRIS:

20 Q Mr. McAllister, sometime ago your discovery

21 deposition was taken by Mr. Woodward. At that time you stated

22 that at times in the past that bags have been reused for

23 products that Southern States makes.

24 A That is right.

25 Q Were you mistaken about that?

1 A. I definitely was mistaken. After I made that
2 statement here in Smithfield, I called Mr. Sonnifer, Mr.
3 Kirkpatrick at the mill to see if they had purchased used
4 bags in recent years, and as he pointed out, in his stay as
5 mill manager, I think seven or eight years, no used bags had
6 ever went into the Richmond mill.
7 Q. Your job mainly is administrative over in the
8 main office of Southern States, is that correct?
9 A. Yes, sir.
10 Q. Hiring and firing and looking at qualifications
11 of people who are hired and that type of thing?
12 A. To a certain extent, but new procedures or new
13 items come into use, we inform through my office, we inform
14 the plant personnel as to how to best handle them and how to
15 store them and how to inventory them, what the proper use is;
16 procedural directives, I guess you'd say.
17 MR. HARRIS: Mr. McAllister, I think that is
18 all.
19 THE COURT: Mr. Delk?
20 MR. DELK: I have no questions.
21 THE COURT: Mr. Woodward?
22
23 CROSS-EXAMINATION
24
25 BY MR. WOODWARD:

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1 Q Mr. McAllister, you were in error when you
2 testified on June 30, 1978, about the used bags?
3 A Yes.
4 Q At that time you thought that there were used
5 bags being used to some extent?
6 A I think I qualified that at the time, that it
7 was possible that used bag may have been used. I'm not
8 certain.
9 Q Let me read your testimony from Page 6 of your
10 deposition. I don't question that we all make errors, and
11 correct me. On Page 6 there was, "Do you repurchase bags
12 from farmers and others?"
13 You answered, "We don't, no. We don't reuse bags
14 unless it comes through a bag dealer that sterilizes and
15 cleans the bags."
16 "Do you have occasion to do that from time to time
17 from a bag dealer?"
18 "Yes, this can happen from time to time."
19 A That is right; that was my -- I agree.
20 Q You spoke with Mr. Kirkpatrick and then you
21 found out that you had made an error?
22 A I made an error.
23 Q Now, as a chemist, Mr. Kirkpatrick (sic), you
24 indicated that you at one time worked in the laboratory in
25 Baltimore of Southern States?

1 A. That is right.

2 Q. In quality control in your Richmond plant, are

3 you familiar with that?

4 A. Yes, uh-huh.

5 Q. Do you run tests there for Phorate or Thimet?

6 A. No.

7 Q. You do not?

8 A. No.

9 Q. In fact, that testing procedure consists of

10 use of infrared testing?

11 A. Hum -- I'm not sure what the analytical procedure

12 is for this particular phosphate compound.

13 Q. Rather complicated?

14 A. It is a rather complicated procedure which

15 requires a lot of instrumentation.

16 Q. So at your Richmond plant you don't perform --

17 A. We have no reason to perform for Thimet. We

18 don't use Thimet.

19 Q. As a general procedure in your quality control,

20 you do not test for Phorate or Thimet in the batches of

21 Pro-Blend that you are running through the Richmond plant?

22 A. We do not.

23 MR. WOODWARD: That's all I have.

24 THE COURT: Any other questions, gentlemen?

25 MR. HARRIS: No.

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1 THE COURT: Thank you. Watch your step.

2 MR. HARRIS: May we have just a moment?

3 THE COURT: Do you need this witness any

4 further?

5 MR. HARRIS: No, sir. He can stay in the

6 courtroom.

7 THE COURT: Can he remain in the courtroom?

8 MR. WOODWARD: I have no objection.

9 MR. HARRIS: Yes, sir.

10 THE COURT: Mr. McAllister, you can remain

11 in the courtroom if you like, sir.

12 (Witness was excused.)

13 MR. HARRIS: We rest.

14 THE COURT: All right, sir. Any witnesses,

15 any rebuttal witnesses?

16 MR. WOODWARD: No, Your Honor.

17 THE COURT: That is the case, gentlemen?

18 All right.

19 Ladies and gentlemen of the jury, it is almost

20 quarter to twelve; I'm going to recess court at this

21 time and release you. I would want you to be back

22 here, and we have to consider the instructions with

23 counsel and then we'll have to eat. Hopefully, by

24 the time you get back we'll have all of that done.

25 I'm going to release you and ask you to be

1 back here promptly at 2:00.

2 Of course, don't discuss your testimony;

3 don't discuss your testimony or anything concerning

4 the trial with anyone.

5 Gentlemen, the jury is released until 2:00

6 and the case will resume at 2:00 P.M.. I'd like to

7 see counsel in the office where we'll consider the

8 instructions.

9

10 PROCEEDINGS IN CLERK'S OFFICE

11

12 MR. HARRIS: I want to renew our motion to

13 strike. If Your Honor please, defendant Southern

14 States Cooperative again moves to strike the plaintiff's

15 evidence for the reason stated at the conclusion of the

16 plaintiff's evidence.

17 THE COURT: All right.

18 MR. HARRIS: I take it that I don't get to

19 reiterate.

20 THE COURT: I am going to overrule that motion

21 and note your exception in the record.

22

23 (A luncheon recess was taken, after which the

24 trial continued as follows:)

25

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1 THE CLERK: Michael Blythe?

2 JURYMAN BLYTHE: Yes, it is.

3 THE CLERK: Thomas Queen?

4 JURYMAN QUEEN: Yes, it is.

5 THE CLERK: Paul Newby?

6 JURYMAN NEWBY: Yes, it is.

7 THE COURT: Ladies and gentlemen of the jury,

8 it is twenty minutes to five. Thank you on behalf of

9 all the parties. Thank you very much for your services.

10 I might comment that during the trial you have been

11 very attentive and the Court appreciates your interest

12 in the case. Thank you very much.

13 I'll assume you will be notified or have been

14 notified when you are expected to return again.

15 Thank you very much.

16 (The jury left the courtroom.)

17 THE COURT: Gentlemen, are there any motions

18 for the Court?

19 MR. DELK: I haven't.

20 MR. HARRIS: Yes, sir. I move to set aside

21 the verdict as contrary to the law and the evidence.

22 I would like to be heard on it.

23 THE COURT: Well, would you like to submit

24 some evidence on the law?

25 MR. HARRIS: I think that would be the main

1 thing, Judge.

2 THE COURT: I would allow you certainly to

3 do that. How much time are you going to need?

4 MR. HARRIS: How long do you think it will

5 take you to write a brief, Tom?

6 MR. REED: A couple of days.

7 THE COURT: I want to have ten days for you

8 to submit a brief on it.

9 MR. HARRIS: All right.

10 THE COURT: Mr. Woodward, I'll give you ten

11 days to respond.

12 MR. WOODWARD: (Nodding head affirmatively.)

13 THE COURT: Then you gentlemen can set it down

14 for argument.

15 MR. HARRIS: All right.

16 MR. WOODWARD: (Nodding head affirmatively.)

17 THE COURT: Thank you.

18 MR. DELK: I would in defense, since he has

19 moved, I think I'll have to be compelled to make a

20 similar motion.

21 THE COURT: All right. I'll allow you to

22 join in that.

23 Now, I'm going to have the clerk prepare the

24 Order, gentlemen, not being a final Order in the case.

25 You want copies of that Order sent to you, and if you

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Telephone 357-4367

ORDER NO. _____ DATE 18/11/57

NAME H.D. Dept

ADDRESS _____

FARMERS SERVICE CO.

SMITHFIELD, VA. 23430

SOLD BY	CASH	C. O. D.	CHARGE	ON ACCT.	MDSE. RET'D	PAID OUT

QUANTITY SOLD	QUANTITY SHIPPED	DESCRIPTION	PRICE	AMOUNT
	1	Sten Rehlyd 50		306.00
	3	Dps TM-10	3.00	45.00
				351.00
			TOTAL	

All claims and returned goods MUST be accompanied by this bill.

INV. NO. 6[illegible]

Received By _____

1) PLAINTIFF EXHIBIT NUMBER 4

Southern States Feed Bag (Used)

2) DEFENDANT (Southern States) Exhibit Number 1

Southern States Feed Bag (Unused)

3) DEFENDANT (Southern States) EXHIBIT NUMBER 2

Vial of THIAMET (poison)

4. DEFENDANT (Farmers Service Company) EXHIBIT NUMBER 2

Debris (including THIAMET)

PRINTERS NOTE:

By agreement of counsel the above mentioned exhibits were designated to be contained as part of the Joint Appendix. Due to the contents of said exhibits we are unable to reasonably reproduce a copy of each for inclusion.