

STATE OF ALABAMA;                      IN THE CIRCUIT COURT OF BALDWIN COUNTY,  
COUNTY OF BALDWIN:                      ALABAMA, CASE NO. 4686

SUPERSEDEAS BOND

KNOW ALL MEN BY THESE PRESENTS, that we, THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation, as Principal and HARTFORD ACCIDENT & INDEMNITY COMPANY, a corporation, as Surety, are held and firmly bound unto Paul Childress and Joy Childress, their heirs, executors, or administrators in the sum of \$6,500.00, for the payment of which, we jointly and severally bind ourselves, and our heirs, executors or administrators, firmly by these presents.

SEALED with our seals, and dated this 21<sup>st</sup> day of September, 1962.

The condition of the above obligation is such, that the above bounden THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation has applied for, and obtained an appeal returnable to the next term, 1962, of the Supreme Court of Alabama, to supersede and reverse a judgment recovered by the said Paul Childress and Joy Childress against the said THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation on the 12th day of September, 1962 in the Circuit Court of Baldwin County, Alabama in the amount of \$3,000.00 besides costs.

Now, if the said THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation, shall prosecute to effect its said appeal

in the Supreme Court of the State of Alabama, and shall pay and satisfy such judgment as the Supreme Court shall render in the premises, then this obligation to be null and void, otherwise to be and remain in full force and effect.

We hereby waive all rights to or claim of exemption as to personal property we have now or may hereafter have, under the Constitution and Laws of the State of Alabama, and we hereby certify that we have property free from all encumbrance in the full amount of the above bond.

WITNESS our hands and seals this the 21<sup>st</sup> day of September, 1962.

THOMPSON-HAYWARD CHEMICAL COMPANY,  
a corporation, principal

By: W.C. Boone  
As its attorney (SEAL)

HARTFORD ACCIDENT & INDEMNITY COMPANY,  
a corporation, surety

By: [Signature] (SEAL)  
As its Attorney-In-Fact

This bond taken and approved this 15 day of Sept, 1962.

[Signature]  
Alice Duck, Clerk, Circuit Court  
Baldwin County, Alabama

STATE OF ALABAMA;

IN THE CIRCUIT COURT OF BALDWIN COUNTY,

COUNTY OF BALDWIN:

ALABAMA, CASE NO. 4686

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WITNESS our hands and seals this the 21<sup>st</sup> day of September, 1962.

THOMPSON-HAYWARD CHEMICAL COMPANY,  
a corporation, principal

By: W. C. Boone  
As its attorney (SEAL)

HARTFORD ACCIDENT & INDEMNITY COMPANY,  
a corporation, surety

By: Robert L. Shuck  
As its Attorney-in-Fact (SEAL)

This bond taken and approved this 25 day of Sept, 1962.

Alice Duck  
Alice Duck, Clerk, Circuit Court  
Baldwin County, Alabama

STATE OF ALABAMA;

IN THE CIRCUIT COURT OF BALDWIN COUNTY,

COUNTY OF BALDWIN:

ALABAMA, CASE NO. 4686

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THOMPSON-HAYWARD CHEMICAL COMPANY,  
a corporation, principal

By: W. C. Boone  
As its Attorney (SEAL)

HARTFORD ACCIDENT & INDEMNITY COMPANY,  
a corporation, surety

By: [Signature]  
As its Attorney-in-Fact (SEAL)

This bond taken and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1962.

Alice Duck, Clerk, Circuit Court  
Baldwin County, Alabama

STATE OF ALABAMA;  
COUNTY OF BALDWIN:

IN THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA, CASE NO. 4686

SUPERSEDEAS BOND

KNOW ALL MEN BY THESE PRESENTS, that we, THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation, as Principal and HARTFORD ACCIDENT & INDEMNITY COMPANY, a corporation, as Surety, are held and firmly bound unto Paul Childress and Joy Childress, their heirs, executors, or administrators in the sum of \$6,500.00, for the payment of which, we jointly and severally bind ourselves, and our heirs, executors or administrators, firmly by these presents.

SEALED with our seals, and dated this 21<sup>st</sup> day of September, 1962.

The condition of the above obligation is such, that the above bounden THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation has applied for, and obtained an appeal returnable to the next term, 1962, of the Supreme Court of Alabama, to supersede and reverse a judgment recovered by the said Paul Childress and Joy Childress against the said THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation on the 12th day of September, 1962 in the Circuit Court of Baldwin County, Alabama in the amount of \$3,000.00 besides costs.

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WITNESS our hands and seals this the 21<sup>st</sup> day of September, 1962.

THOMPSON-HAYWARD CHEMICAL COMPANY,  
a corporation, principal

By: W. C. Boone  
As its Attorney (SEAL)

HARTFORD ACCIDENT & INDEMNITY COMPANY,  
a corporation, surety

By: Robert H. Schneider (SEAL)  
As its Attorney-in-Fact

This bond taken and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1962.

Alice Duck, Clerk, Circuit Court  
Baldwin County, Alabama



PAUL CHILDRESS, JR. AND  
JOY CHILDRESS,

Plaintiffs

vs

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a Corporation,  
et al,

Defendants,

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 1686

Comes now the Defendants, Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, and files the following pleas to the Complainants Amended Complaint:

1.

Not Guilty.

2.

The Defendants say further that the Plaintiffs should not be allowed to recover in this cause for at the place and time alleged in the Plaintiffs' Amended Complaint, said Plaintiffs were negligent themselves, and that the death of their cattle was caused by their own contributory negligence. The Defendants say the Plaintiffs knew or should have known that Sodium Arsenite was poisonous and that he was negligent in putting the same on his potatoe crop when the wind was blowing enough to cause the same to go out of the potatoe field into another area; that the aforesaid negligence of the Plaintiff's was the cause of his loss, hence, he should not be allowed to recover from the Defendants.

WILTERS & BRANTLEY

BY:

Long J. Wilters  
Attorneys for the Defendants

FILED  
SEP 10 1965  
ALICE L. DUCK, CLERK  
REGISTER

60-11

PAUL CHILDRESS, JR. and	)	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	)	
	)	BALDWIN COUNTY
Plaintiffs,	)	ALABAMA
Vs.	)	
	)	AT LAW
THOMPSON-HAYWARD CHEMICAL	)	
COMPANY, A Corporation,	)	
et al,	)	
	)	
Defendants.	)	CASE NO. 4686
	)	

ANSWER TO AMENDED COMPLAINT

Comes now the defendant, Thompson-Hayward Chemical Company, a corporation, in the above cause, and for answer to the complaint herein as last amended and to each count thereof, separately and severally, files the following separate and several pleas:

1. Not guilty.

2. The material allegations thereof are untrue.

3. At the time and place complained of, the plaintiffs themselves were guilty of negligence which proximately contributed to damages of which they complain, and, hence, they ought not recover against this defendant.

4. At the time and place complained of, the plaintiffs themselves were guilty of negligence which proximately contributed to the injuries and damages of which they complain and, hence, they ought not recover. Said negligence consisted of the following: On or about, to-wit, May 31 or June 1, 1960, the plaintiff Paul Childress, Jr. negligently sprayed or caused to be sprayed the product complained of on a field near pasture land upon which said cows were

60-2

grazing or were to graze. At the time of the spraying, a wind was blowing from such a direction and in such a manner that it was apparent or, in the exercise of reasonable care, should have been apparent, that said product would float or drift onto said pasture. Paul Childress, Jr. was a farmer and had been for many years, and it was the general knowledge of farmers in his community or neighborhood that said product would kill or injure cows. Accordingly, he knew, or in the exercise of ordinary care should have known, that said product would be likely to injure or kill any cows eating the same, but he nonetheless sprayed or caused said product to be sprayed as aforesaid. Hence, plaintiffs ought not recover against this defendant.

5. The plaintiffs ought not recover of this defendant in this cause for that, shortly before the time complained of in the complaint, this defendant sold the product complained of to one or more of the other defendants in this cause in a barrel or container bearing a label properly attached thereto, a true copy of which is attached hereto as Exhibit "A", which label contained the clear warning that said Swan Brand Sodium Arsenite Solution No. 40 should be kept away from animals, and, further, that animals should not have access to said solution, to said container or to water treated with such solution.

6. At the time and place complained of, the plaintiffs themselves were guilty of negligence which proximately contributed to the injuries and damages of which they complain

60-11

and hence they ought not recover. The plaintiffs' negligence consisted in this: On, to-wit, May 31 or June 1, 1960, the plaintiff, Paul Childress, Jr., purchased or caused to be purchased a drum of the product complained of, which said drum was, at the time of said purchase, labeled by this defendant and which label clearly stated that such product should be kept away from animals and that animals should not have access thereto; thereafter, he did negligently spray or allow to be sprayed such product in close proximity to land where said cattle were grazing, so that such cattle consumed said product and were injured, all when he knew, or in the exercise of ordinary care should have known, that such cattle would be likely to consume a portion of such product and be injured.

7. The plaintiffs ought not recover of this defendant in this cause for that, at the time and place complained of, the plaintiff, Paul Childress, Jr., who knew or, in the exercise of ordinary care, should have known, that the product complained of would kill or injure cows if consumed by them, nonetheless so negligently sprayed or allowed to be sprayed the said product in such a manner and at such a time as to allow it to be consumed by said cows, as complained of in the complaint, and the plaintiffs thereby proximately contributed to the damages of which they complain and, hence, they ought not recover against this defendant.

Paul A. Brook  
Attorney for Defendant,  
Thompson-Hayward Chemical Company

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

60X

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing answer upon Norborne Stone, Esq., attorney for the plaintiff, and upon Harry Wilters, Esq., attorney for defendant A. Bertolla & Sons, by depositing the same in the United States Mail, postage prepaid, addressed to said attorneys at their respective offices in Bay Minette, Alabama, on this, the <sup>21st</sup> ~~17th~~ day of September, 1965.

Paul W. Brock

FILED

SEP 22 1965

ALICE I. DICK, CLERK  
REGISTER

## INSTRUCTIONS—Continued

during sap-peeling season. (See state forestry officials for sap-peeling date for specific species.)

Better results have been obtained by treating trees 8 to 17 inches in diameter.

### AQUATIC WEED CONTROL

For the control of aquatic weeds, the following amounts of Swan Brand Sodium Arsenite Solution #40 should be used for each 10,000 cubic feet of water to be treated:

To Control Weeds In:	Amount Swan Brand Sodium Arsenite Solution #40
Small lakes	1½ quarts
Large lakes	1½ gallons
Shoreline areas	1 gallon

After determining the amount of Swan Brand Sodium Arsenite Solution #40 required, dilute with a convenient volume of water and either spray or spread over area to be treated. Uniform distribution is essential for best results. Fish and other aquatic life are repelled by sodium arsenite. However, in heavily infested areas it is advisable to treat small sections at a time to prevent suffocation.

Use exactly as directed as excessive application or poor distribution can kill fish. Children and animals should not have access to Swan Brand Sodium Arsenite Solution #40, containers or treated water.

**Weeds Controlled:** Arrowhead, waterplantain, waterweed, hornwort, parrotfeather, water milfoil, curlyleaf, pondweed, leafy pondweed, fine leaf pondweed, common poolmat, naiad, wild cherry, water stargrass, water purslane, bladderwort, water-crowfoot, algae, water lilies and cattails.

Lake bullrushes and chara are resistant to Swan Brand Sodium Arsenite Solution #40.

### WARNING

Poisonous if taken internally. May cause severe irritation to skin or eyes. Avoid inhaling mist from sprays. Avoid contact with skin, eyes or clothing. Avoid contamination of foodstuffs. Keep away from children and animals. Don't apply spray or baits where children or domestic animals will have access to them. In case of skin contact, wash with plenty of water. For eyes, flush with water, followed by warm boric acid solution, and get prompt medical attention. Misuse as to quantity, timing or method of application can cause damage or injury to animals, persons, property or crops or cause residues in excess of official tolerances.

**NOTICE:** The above directions are based upon use under normal and reasonably foreseeable conditions. If the directions are followed and precautions on this label observed, available research indicates that this product will give satisfactory results and that the residue will be within official tolerances. However, because climatic, geographic, and other conditions of use will vary widely, neither Thompson-Hayward Chemical Company nor seller makes any warranty or representation expressed or implied concerning this product or its use except that it conforms to the chemical description on the label and no person is authorized to make any other representations upon their behalf. Neither Thompson-Hayward Chemical Company nor seller shall be held responsible for damages resulting from the handling, storage or use of this product for any reason except the failure of the material to conform to the chemical description on this label. Damages, if any, which may result from the failure of this product to conform to the description on this label shall be limited to direct damages but shall not include consequential damages such as those resulting from crop injury, residues in excess of official tolerances, or failure to give adequate control.

## NET CONTENTS

## GALLON

# Swan Brand SODIUM ARSENITE

Solution #40

A HERBICIDE,  
TREE KILLER AND  
GRASSHOPPER POISON

CONTAINS  
ARSENIOUS  
OXIDE  
4 LBS. PER GALLON\*

\*EQUIVALENT TO 5.25 POUNDS SODIUM ARSENITE  
PER GALLON

#### ACTIVE INGREDIENT:

Sodium Arsenite (NaAsO <sub>2</sub> ).....	40.0%
Total Arsenite (expressed as metallic).....	23.1%
Arsenic in Water Soluble Form (expressed as metallic).....	23.1%

#### INERT INGREDIENTS.....

60.0%  
100.0%



**POISON**



**ANTIDOTE**—Give a tablespoonful of salt in a glass of warm water and repeat until vomit fluid is clear. Then give 2 tablespoonfuls of Epsom salts or milk of magnesia in water and plenty of milk and water. Have victim lie down and keep quiet. CALL A PHYSICIAN IMMEDIATELY!

AC-4



THOMPSON-HAYWARD CHEMICAL COMPANY

## INSTRUCTIONS

BEFORE USE READ WARNING AND NOTICE  
STATEMENTS CAREFULLY

This product is toxic and may cause injury to humans and animals and must be handled with care.

This product may cause injury to desirable plants and crops and must be handled with care.

### POTATO VINE DESTRUCTION

To kill potato vines to facilitate harvesting, spray 7 to 10 days before harvest with a solution of 2 gallons of Swan Brand Sodium Arsenite Solution #40 in 100-125 gallons of water per acre. Do not apply to exposed tubers. This also helps destroy certain weeds and crabgrass often present in potato fields.

### WEED CONTROL

**ANNUAL WEEDS**, such as chickweed, cocklebur, pigweed and ragweed, can be controlled around industrial plants, tank farms, utility right of ways, etc., by diluting 1 gallon of Swan Brand Sodium Arsenite Solution #40 with 9 gallons of water and applying to 1,000 to 1,200 square feet.

**PERENNIAL WEEDS**, such as chickweed, dandelion, dock, and plantain, can be controlled in parking areas, around electrical substations, billboards and other industrial areas by diluting 1 gallon of Swan Brand Sodium Arsenite Solution #40 with 3 gallons of water and applying to 300 to 500 square feet.

**SOIL TREATMENT:** Dilute ½ gallon of Swan Brand Sodium Arsenite Solution #40 with 1 gallon of water and apply to 150 to 200 square feet.

**LAWN TREATMENT:** For control of crabgrass, chickweed, dandelions, plantain, clover and pennywort in turf mix 3 to 6 fluid ounces of Swan Brand Sodium Arsenite Solution #40 with sufficient water to cover 1,000 square feet. When using sprinkling can, 25 gallons of water should be sufficient; for pressure sprayers, 5 gallons of water is adequate.

**TREE KILLER:** Trees may be destroyed by making a circle of ax gashes around the trunks and pouring into these wounds a solution of 1 gallon of Swan Brand Sodium Arsenite Solution #40 in 2 gallons of water. Also, this solution may be poured over freshly cut stumps to prevent sprouting. Additional treatments should be made at weekly intervals until the tree or stump is dead.

### GRASSHOPPER BAIT

A poison bait may be prepared by mixing 1 gallon of the liquid in this container with 100 pounds of bran and sufficient water to moisten the mixture. Scatter over grasshopper infested areas in the morning, using about 15 pounds per acre. For armyworm and cutworm control evening application, at the same rate, is recommended. Sawdust or ground corncobs may be used in place of bran with molasses added to increase the attractiveness of the bait.

### CHEMICAL TREE DEBARKING

Make a 4- to 6-inch girdle, cutting to sapwood. Liberally apply Swan Brand Sodium Arsenite Solution #40 to clean face of sapwood. Make 2 or 3 applications before surface of sapwood dries. Apply

Dependant on how used

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 64-65

To the Clerk of the Circuit Court of

Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court

of said county, in a certain cause lately pending in said Court between

Thompson-Hayward Chemical Co., a Corp., & Angelo Bertolla, Appellant,  
et al., Ind. & d/b/a A. Bertolla & Sons  
and

Paul Childress, Jr. and Joy Childress, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before our  
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

Now, it is hereby certified, That it was thereupon considered, ordered, adjudged, and decreed by  
our Supreme Court on the 19th day of November, 19 64, that said judgment  
of said Circuit Court be reversed and annulled, and the cause remanded to said court  
for further proceedings therein; and that it was further considered, ordered, adjudged, and decreed  
that the appelleeS pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution  
issue.

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, at the Judicial Department

Building, this the 19th day of  
November, 19 64

J. Render Thomas  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1964-65

1 Div., No. 104

Thompson-Hayward Chemical, a Corp.  
& Angelo Bertolla, et al., Ind. &  
d/b/a A. Bertolla & Sons

Appellant,

vs.

Paul Childress, Jr., & Joy

Childress

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF  
REVERSAL

The State of Alabama,

Baldwin County.

} Filed

this 20 day of Nov. 1964

Alvin J. Tucker



PAUL CHILDRESS, JR., and  
JOY CHILDRESS,

Plaintiffs,

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation,  
and ANGELO BERTOLLA, ALEX  
S. BERTOLLA, R. F. BERTOLLA  
and J. F. BERTOLLA, in-  
dividually and doing business  
as A. BERTOLLA & SONS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Come now the Plaintiffs in the above styled cause, by  
their attorneys, and amend their complaint so that the same shall  
read as follows:

COUNT ONE:

The Plaintiffs claim of the Defendants the sum of Five  
Thousand Five Hundred Dollars (\$5,500.00) as damages in this: the  
Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and  
R. F. Bertolla, individually and doing business as A. Bertolla &  
Sons, were in the month of May, 1960, marketers, distributors or  
dealers in Baldwin County, Alabama, of agricultural chemicals  
manufactured and marketed by the Defendant Thompson-Hayward Chemi-  
cal Company. That among the products manufactured and sold by the  
Defendant Chemical Company and sold, marketed or distributed by  
the Defendants Bertolla in Baldwin County, Alabama, in May, 1960,  
was a product sold, marketed or distributed under the brand name  
of "Swan Brand, Sodium Arsenite, Solution #40"; that said pro-  
duct contained <sup>50.8%</sup> ~~50.8%~~ arsenite by weight and was an in-  
herently dangerous and toxic chemical compound or solution, all  
of which was known, or should have been known, to the Defendants.  
That the Plaintiff Paul Childress, Jr., purchased a quantity of  
said "Swan Brand, Sodium Arsenite, Solution #40" for application  
by him to a potato crop then owned by him to kill the potato vines  
for the purpose of facilitating the harvest of his potato crop,  
and he did apply such solution to his said crop in accordance with  
the instruction given to him by the Defendant Bertolla. And the

Plaintiffs further allege that during the application of said solution to said crop that a portion of the same drifted or floated out of the field in which said crop was located into and upon a pasture located adjacent thereto wherein the Plaintiffs grazed their dairy herd and said solution settled upon the grass located in such pasture. And the Plaintiffs further allege that a number of their dairy cattle ate the grass upon which some of such solution had settled and as a proximate result of the eating of such inherently dangerous or toxious solution the Plaintiffs were damaged in this: nine of their cows died from sodium arsenite poisoning and two of them were rendered of no value whatsoever, and they were caused to incur, and did incur, veterinary bills and medical bills in the treatment of their said animals in an attempt to prevent their death or injury from said poisoning and the Plaintiffs allege that all of their damages, aforesaid, were a proximate result and consequence of the negligence of the Defendants in failing to warn the Plaintiffs of the inherently dangerous <sup>nature</sup> ~~matter~~ of said product. All to the damage of the Plaintiffs, wherefore they bring this suit and ask judgment in the above amount.

#### COUNT TWO

The Plaintiffs claim of the Defendants the sum of Five Thousand Five Hundred Dollars (\$5,500.00) as damages in this: the Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and R. F. Bertolla, individually and doing business as A. Bertolla & Sons, were in the month of May, 1960, marketers, distributors or dealers in Baldwin County, Alabama, of agricultural chemicals manufactured and marketed by the Defendant Thompson-Hayward Chemical Company. That among the products manufactured and sold by the Defendant Chemical Company and sold, marketed or distributed by the Defendants Bertolla in Baldwin County, Alabama, in May, 1960, was a product sold, marketed or distributed under the brand name of "Swan Brand, Sodium Arsenite, Solution #40; that said product contained 39.12% sodium arsenite by weight and was an inherently dangerous and toxic chemical compound or solution, all of which

was known, or should have been known, to the Defendants. That the Plaintiff Paul Childress, Jr. purchased a quantity of said "Swan Brand, Sodium Arsenite, Solution #40" for application by him to a potato crop then owned by him to kill the potato vines for the purpose of facilitating the harvest of his potato crop, and he did apply such solution to his said crop in accordance with the instruction given to him by the Defendant Bertolla. And the Plaintiffs further allege that during the application of said solution to said crop that a portion of the same drifted or floated out of the field in which said crop was located into and upon a pasture located adjacent thereto wherein the Plaintiffs grazed their dairy herd and said solution settled upon the grass located in such pasture. And the Plaintiffs further allege that a number of their dairy cattle ate the grass upon which some of such solution had settled and as a proximate result of the eating of such inherently dangerous or toxic solution the Plaintiffs were damaged in this: nine of their cows died from sodium arsenite poisoning and two of them were rendered of no value whatsoever, and they were caused to incur, and did incur, veterinary bills and medical bills in the treatment of their said animals in an attempt to prevent their death or injury from said poisoning and the Plaintiffs allege that all of their damages, aforesaid, were a proximate result and consequence of the negligence of the Defendants in failing to properly label or stamp the drum in which said product was contained and in which it was sold to the Plaintiff Paul Childress, Jr., so as to warn him of the inherently dangerous and toxic <sup>nature</sup> ~~product~~ of said product and that it would cause injury and damage to livestock if such livestock ate foliage on which said product might settle. All to the damage of the Plaintiffs, wherefore they bring this suit and ask judgment in the above amount.

CHASON & STONE

By: Melvin S. Stone, Jr.  
Attorneys for Plaintiffs

Plaintiffs demand a  
trial of this cause by a  
jury.

CHASON & STONE

By: Melvin S. Stone, Jr.  
Attorneys for Plaintiffs

SEP 11 1962  
FBI  
RECEIVED  
COURT  
CLERK

PAUL CHILDRESS, JR. AND  
JOY CHILDRESS,

Plaintiffs,

Vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation,  
et al,

Defendants.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. \_\_\_\_\_

Comes now the Defendants, Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, and files the following demurs to the Plaintiffs' Complaint as last amended and to each and every count thereof separately and severally:

1.

That it does not state facts sufficient to constitute a cause of action against this defendant.

2.

For that negligence is therein alleged merely as a conclusion of the pleader.

3.

For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence the defendant is called on to defend.

4.

For that it does not appear with sufficient certainty what duty, if any, this defendant may have owed to the plaintiffs.

5.

For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by defendant to the plaintiffs.

6.

For that it does not sufficiently appear that this defendant owed any duty to the plaintiffs which defendant negligently failed to perform.

7.

For that the averments set up, if true, do not show any liability on the part of this defendant.

8.

For that the pleader endeavors to set out in what said negligence consisted, and the facts so set out do not show negligence.

9.

No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of any negligence or breach of duty on the part of this defendant.

10.

It affirmatively appears from the complaint that the plaintiffs were guilty of contributory negligence.

11.

It affirmatively appears from the complaint that the injuries and damages of which the plaintiffs complain was caused by their own negligence.

12.

The complaint does not allege which defendant knew or should have known that said product was inherently dangerous.

13.

There is a misjoinder of parties Defendants.

14.

For aught appearing, one of the Bertollas, in his individual capacity, gave the instructions referred to to the Plaintiffs, hence, the other Defendants cannot be held liable.

15.

From the Complaint, the Defendants cannot tell which of the Bertollas are charged with selling, marketing and distributing Sodium Arsenite.

The following demur is directed to Count II only.

16.

The Plaintiffs fail to allege which of the Defendants negligently failed to properly label or stamp the drum.

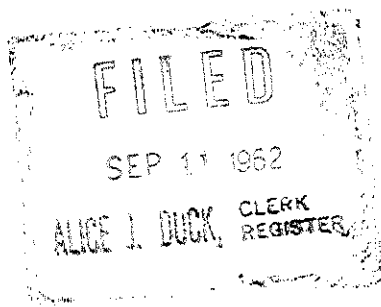
17.

For aught appearing, one of the Bertollas, in his individual capacity, failed to properly label or stamp the drum, hence, all Defendants cannot be held liable.

WILTERS & BRANTLEY

BY:

*Robert M Brantley*  
Attorney for Defendants



PAUL CHILDRESS, JR. AND  
JOY CHILDRESS,

Plaintiffs,

Vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation,  
et al,

Defendants.

X  
X  
X  
X  
X  
X  
X  
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. \_\_\_\_\_

Comes now the Defendants, Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, and files the following pleas to the Complainants Amended Complaint:

1.

Not Guilty.

2.

The Defendants say further that the Plaintiffs should not be allowed to recover in this cause for at the place and time alleged in the Plaintiffs' Amended Complaint, said Plaintiffs were negligent themselves, and that the death of their cattle was caused by their own contributory negligence. The Defendants say the Plaintiffs knew or should have known that Sodium Arsenite was poisonous and that he was negligent in putting the same on his potatoe crop when the wind was blowing enough to cause the same to go out of the potatoe field into another area; that the aforesaid negligence of the Plaintiffs was the cause of his loss, hence, he should not be allowed to recover from the Defendants.

WILTERS & BRANTLEY

BY: *Ray J. Wilters*  
Attorney for the Defendants

*Filed*  
*9-10-62*  
*King*  
*clerk*

PAUL CHILDRESS, JR. and	:	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	:	
	:	
Plaintiffs.	:	BALDWIN COUNTY, ALABAMA
	:	
v.	:	
	:	AT LAW
THOMPSON-HAYWARD CHEMICAL	:	
COMPANY, a corporation,	:	
Et al,	:	CASE NO. _____
	:	
Defendants.	:	
	:	

D E M U R R E R

Comes now the defendant, Thompson-Hayward Chemical Company, a corporation, in the above styled cause, and demurrers to the complaint heretofore filed, and each count thereof, separately and severally, by interposing thereto the following separate and several grounds of demurrer:

1. That it does not state facts sufficient to constitute a cause of action against this defendant.
2. For that negligence is therein alleged merely as a conclusion of the pleader.
3. For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence the defendant is called on to defend.
4. For that it does not appear with sufficient certainty what duty, if any, this defendant may have owed to the plaintiffs.
5. For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by defendant to the plaintiffs.



6. For that it does not sufficiently appear that this defendant owed any duty to the plaintiffs which defendant negligently failed to perform.

7. For that the averments set up, if true, do not show any liability on the part of this defendant.

8. For that the pleader endeavors to set out in what said negligence consisted, and the facts so set out do not show negligence.

9. No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of any negligence or breach of duty on the part of this defendant.

10. It is not alleged that the negligence complained of proximately caused the accident and the injuries and damages complained of.

11. For that said count is duplicitous.

12. For that each injury complained of in the alternative could not result from each alternative act allegedly causing such injury.

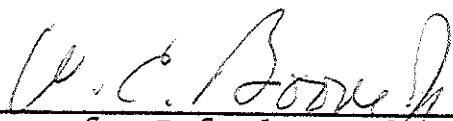
13. For that each alternative averment does not state facts sufficient to constitute a cause of action against this defendant.

14. For that there is a misjoinder of causes of action.

15. For that there is a misjoinder of parties plaintiff.

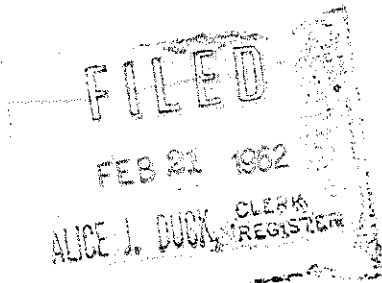
16. It affirmatively appears from the complaint that the plaintiffs were guilty of contributory negligence.

17. It affirmatively appears from the complaint that the injuries and damages of which the plaintiffs complain was caused by their own negligence.

  
Attorney for Defendant, Thompson-Hayward Chemical Company, a corporation.

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON



PAUL CHILDRESS, JR., and  
JOY CHILDRESS,

Plaintiffs,

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation and  
ANGELO BERTOLLA, ALEX S.  
BERTOLLA, R. F. BERTOLLA and  
J. F. BERTOLLA, individually  
and doing business as A.  
BERTOLLA & SONS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 4686

DEMURRER

1.

The Complaint fails to state a cause of action.

2.

The Complaint fails to state wherein the Defendants  
were negligent.

3.

For aught appearing from the Complaint, the injuries  
suffered were caused by their own negligence, and not the  
negligence of the Defendants.

4.

From the Complaint, the Defendants cannot determine  
whether the loss of milk sale was from the cows who were  
alleged to have died, or from other cattle owned by the  
Plaintiffs.

5.

Distributing a solution which is toxic is not negligence  
within itself, hence, the Plaintiffs do not state a cause of  
action.

WILTERS & BRANTLEY

FILED

JUN 15 1961

ALICE J. DUCK, Clerk

BY:

*Robert M. Brantley*  
Attorneys for the Defendants

PAUL CHILDRESS, JR. and	:	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	:	
	:	
Plaintiffs.	:	BALDWIN COUNTY, ALABAMA
	:	
v.	:	
	:	AT LAW
THOMPSON-HAYWARD CHEMICAL	:	
COMPANY, a corporation,	:	
Et al,	:	CASE NO. _____
	:	
Defendants.	:	

MOTION TO STRIKE

Comes now defendant Thompson-Hayward Chemical Company, a corporation, in the above styled cause, and respectfully moves the court to strike the following allegation from the complaint:

" . . and as a result their gross receipts from the sale of milk were reduced to the extent of \$3,000.00."

As separate and several grounds of such motion to strike, said defendant sets down and assigns the following, separately and severally:

1. Said phrase seeks to cover an illegal and non-allowable measure of damage.
2. For that said claim is superfluous.
3. For that said phrase seeks to recover a non-allowable element of damage.
4. For that said phrase seeks to recover a speculative element of damage.
5. For that the element of damage sought to be recovered in said phrase is speculative and not allowed as an element of damage in a suit of this nature.

**FILED**

FEB 21 1962

AUGIE J. DUCK, CLERK  
REGISTER

*W. C. Borch*

Attorney for Thompson-Hayward Chemical Company, a corporation, defendant.

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

May 1, 1961

PAUL CHILDRESS, JR., and JOY CHILDRESS, Plaintiff  
VS.  
THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation,  
et al, Defendants

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA AT LAW

CASE NO. Not Given

STATE OF ALABAMA  
MONTGOMERY COUNTY

Before me, Nancy H. Turner, a Notary Public in and for said  
State-at-Large, personally appeared Bettye Frink, Secretary of State of the State of Alabama,  
who is known to me and who, being duly sworn, deposes and says that in her official capacity  
as Secretary of State of the State of Alabama she, on the 21 day of  
April 1961 sent by registered mail in an envelope addressed as follows:

"Thompson-Hayward Chemical Company  
2915 Southwest Boulevard  
Kansas City 8, Missouri"

"Registered Mail—  
Return Receipt Requested  
Deliver to Addressee only"

bearing sufficient and proper prepaid postage, a notice bearing her signature and the Great  
Seal of the State of Alabama in words and figures as follows:

"Thompson-Hayward Chemical Company  
2915 Southwest Boulevard  
Kansas City 8, Missouri

You will take notice that on April 21, 1961 the Sheriff of  
Montgomery County, Alabama, served upon me, in my official capacity, Summons and  
Complaint and Affidavit in a case entitled: PAUL CHILDRESS, JR., and JOY CHILDRESS,  
Plaintiff VS THOMPSON-HAYWARD CHEMICAL COMPANY, a corporation, et al,  
Defendants

in the CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW  
Case No. Not Given

a true copy of which Summons and Complaint and Affidavit are attached hereto and the  
said service upon me as Secretary of State of the State of Alabama has the force and  
effect of personal service upon you, said service being under provisions of Title 7, Sec-  
tion 199(1) of the 1940 Code of Alabama and Supplement thereto.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 21  
day of April 1961

(Signed) Bettye Frink  
Bettye Frink  
Secretary of State

Enclosures (2)

Affiant further says that the notice above set out which was so mailed in the envelope ad-  
dressed as above set forth had attached to it a true copy of the Summons and Complaint and  
Affidavit in the above-styled cause.

Affiant further says that on Apr 28 1961 she received the "Return  
Card" showing receipt by the designated addressee of the aforementioned  
matter at Kansas City Mo. on Apr 26 1961

Bettye Frink  
Affiant—Bettye Frink  
Secretary of State

Sworn to and subscribed before me, this the 1 day of May 1961

Nancy H. Turner  
Notary Public—State-at-Large  
My Commission expires: 10-17-62

Enclosures—"Return Receipt" and  
Copy of Process  
cc: Honorable Norborne C. Stone, Jr.  
Attorney at Law  
Arcade Building  
Bay Minette, Alabama

STATE OF ALABAMA )  
BALDWIN COUNTY )

IN THE CIRCUIT COURT - LAW SIDE

TO: ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Thompson-Hayward Chemical Company, a corporation, and Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla, individually and doing business as A. Bertolla & Sons, to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of Paul Childress and Joy Childress.

Witness my hand this the 19 day of April, 1961.

  
Clerk

PAUL CHILDRESS, JR., and  
JOE CHILDRESS,

Plaintiffs,

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation, and  
ANGELO BERTOLLA, ALEX S.  
BERTOLLA, R. F. BERTOLLA and  
J. F. BERTOLLA, individually  
and doing business as A.  
BERTOLLA & SONS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

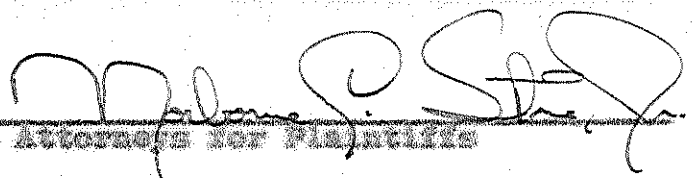
AT LAW

COUNT ONE:

The Plaintiffs claim of the Defendants the sum of Nine Thousand Five Hundred Dollars (\$9,500.00) as damages in this: the Defendant Thompson-Hayward Chemical Company is engaged in the manufacture, sale and distribution of industrial and agricultural chemicals in the State of Alabama and the marketing of the same through agents or licensed dealers in Baldwin County, Alabama, and was so engaged during the month of May, 1960. That the Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and R. F. Bertolla, individually and doing business as A. Bertolla & Sons, were in the month of May, 1960, marketers, distributors or dealers in Baldwin County, Alabama, of agricultural chemicals of the Defendant Thompson-Hayward Chemical Company, and were at said time the agents of said Defendant Chemical Company. That among the products so sold, marketed, distributed by the Defendants in Baldwin County, Alabama, in May, 1960, was a product sold, marketed or distributed under the brand name of "Suan Brand, Sodium Arsenite, Solution #40" which the Defendants advertised and represented to be suitable and proper to kill potato vines to facilitate harvesting. That said product contained 30.12% sodium arsenite by weight and was an inherently dangerous and toxic chemical compound or solution, all of which was known, or should have been known to the Defendants. That the Plaintiff Paul Childress, Jr., relying upon the representations of the Defendants purchased a quantity of said "Suan Brand, Sodium Arsenite, Solution #40" for application by him to a potato crop then owned by him to kill the potato vines for the purpose of facilitating the harvest of his

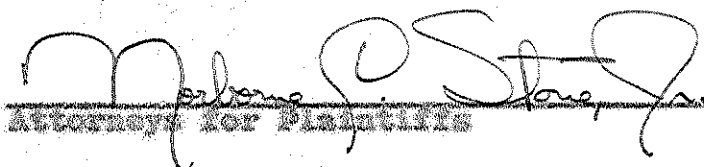
potato crop, and he did apply such solution to his said crop in accordance with the instructions given to him by the Defendants. And the Plaintiffs further allege that during the application of said solution to said crop that a portion of the same drifted or floated out of the field in which said crop was located into and upon a pasture located adjacent thereto wherein the Plaintiffs grazed their dairy herd and said solution settled upon the grass located in such pasture. And the Plaintiffs further allege that a number of their dairy cattle ate the grass upon which some of such solution had settled and as a proximate result of the eating of such inherently dangerous or toxic solution the Plaintiffs were damaged in this: eleven (11) of their cows of a value of Four Thousand Five Hundred Dollars (\$4,500.00) died from sodium arsenite poisoning; they were caused to incur and did incur veterinary bills and medical bills in the treatment of their said animals in an attempt to prevent their death in the sum of Eight Hundred and Fifty-nine Dollars (\$859.00); and they were caused to lose the production of milk from said cows for a great period of time and as a result their gross receipts from the sale of milk were reduced to the extent of Three Thousand Dollars (\$3,000.00). And the Plaintiffs allege that all of their damages, aforesaid, were a proximate result and consequence of the negligence of the Defendants negligently distributing, marketing, offering for sale and selling said solution of an inherently dangerous and toxic nature while they knew, or should have known, that if any of said solution was consumed by dairy cattle that they would die as a result thereof. All to the damage of the Plaintiffs, wherefore they bring this suit and ask judgment in the above amount.

CHASON & STONE

By:   
Attorneys for Plaintiffs

Plaintiffs demand a trial of  
this cause by jury.

CHASON & STONE


  
Attorneys for Plaintiffs



The Defendant Thompson-Hayward Chemical Company, a corporation, is a foreign corporation, service upon which may be had under the provisions of Title 7, Section 199 (1) of the Code of Alabama of 1940, and there is filed simultaneously with the filing of this complaint an affidavit as required by said statute.

CHASON & STONE

By:

  
Attorneys for Plaintiffs

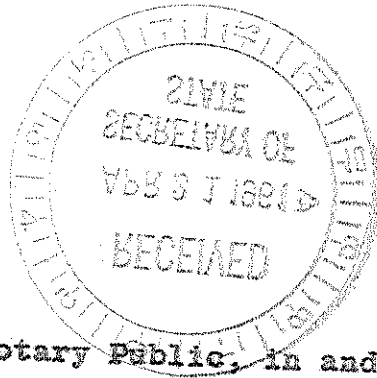
FILED

APR 19 1961

ALICE L. DUCK, CLERK  
REGISTER

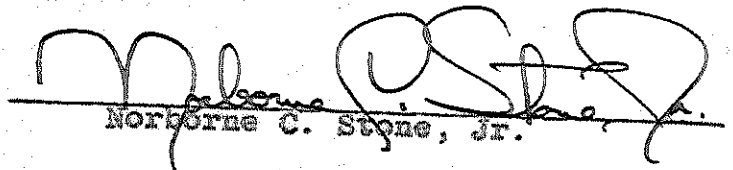
STATE OF ALABAMA

BALDWIN COUNTY



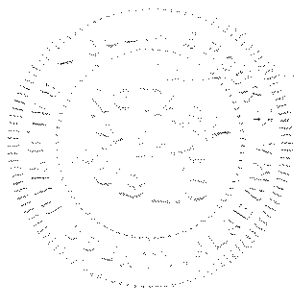
Before me, Julia Brock, a Notary Public, in and for said County in said State, personally appeared Norborne C. Stone, Jr. who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Norborne C. Stone, Jr. and he is one of the attorneys of record for Paul Childress, Jr. and Joy B. Childress, the Plaintiffs in that certain cause this day filed in the Circuit Court of Baldwin County, Alabama, At Law, wherein Thompson-Hayward Chemical Company is one of the Defendants. That said Chemical Company is a corporation having its principal place of business in Kansas City, Missouri, the address of which is 2915 Southwest Boulevard, Kansas City 8, Missouri. That said corporation was doing business in the State of Alabama in the month of May, 1960 and was not at that time qualified under the Constitution and Laws of the State of Alabama as to doing business therein. That this affidavit is made under the provisions of Title 7, Section 199(1) of the Code of Alabama of 1940, recompiled 1958, to be filed in said cause.

  
Norborne C. Stone, Jr.

Sworn to and subscribed before me on  
this the 19<sup>th</sup> day of April, 1961.

  
Notary Public, Baldwin County, Alabama.



FILED

APR 19 1961

ALICE J. DUCK, CLERK  
REGISTER

PAUL CHILDRESS, JR. AND  
JOY CHILDRESS,

Plaintiffs,

Vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation,  
et al,

Defendants.

X  
X  
X  
X  
X  
X  
X  
X  
X  
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. \_\_\_\_\_

DEMURRER

Comes now the Defendants, Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, and files the following demurs to the Plaintiff's Amended Complaint:

1.

That it does not state facts sufficient to constitute a cause of action against this defendant.

2.

For that negligence is therein alleged merely as a conclusion of the pleader.

3.

For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence the defendant is called on to defend.

4.

For that it does not appear with sufficient certainty what duty, if any, this defendant may have owed to the plaintiffs.

5.

For that it doesnot appear with sufficient certainty wherein this defendant violated any duty owed by defendant to the plaintiffs.

6.

For that it does not sufficiently appear that this defendant owed any duty to the plaintiffs which defendant negligently

failed to perform.

7.

For that the averments set up, if true, do not show any liability on the part of this defendant.

8.

For that the pleader endeavors to set out in what said negligence consisted, and the facts so set out do not show negligence.

9.

No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of any negligence or breach of duty on the part of this defendant.

10.

It affirmatively appears from the complaint that the plaintiffs were guilty of contributory negligence.

11.

It affirmatively appears from the complaint that the injuries and damages of which the plaintiffs complain was caused by their own negligence.

12.

The complaint does not allege which defendant represented to and advertised "Swan Brand, Sodium Arsenite, Solution #40" to be suitable and proper to kill potatoe vines.

13.

The complaint does not allege which defendant knew or should have known that said product was inherently dangerous.

14.

The complaint does not allege that the Plaintiff's cattle died from eating the "Swan Brand, Sodium Arsanite, Solution #40" sold to them by the Defendants.

15.

For aught appearing, the sodium arsenite eaten by the Plaintiffs' cattle came from another source.

16.

The Defendants do not know whether the Plaintiffs are claiming damages for loss of two or two hundred cattle.

17.

The Plaintiffs are not entitled to claim as damages veterinary bills incurred to aid in showing the cause of their cattle's death.

WILTERS & BRANTLEY

BY: *Lang Wilters*  
Attorney for the Defendants

*Filed 9-10-62*  
*Alice French*  
*clerk*

PAUL CHILDRESS, JR.	)	IN THE CIRCUIT COURT OF
and JOY CHILDRESS,		
	)	
Plaintiffs	)	
	)	
vs.		BALDWIN COUNTY, ALABAMA
	)	
THOMPSON-HAYWARD CHEMICAL		
COMPANY, a corporation,		
and ANGELO BERTOLLA, ALEX	)	
B. BERTOLLA, R. F. BERTOLLA		AT LAW
and J. F. BERTOLLA, indivi-	)	
dually and doing business	)	
as A. BERTOLLA AND SONS,		
	)	
Defendants	)	

MOTION TO QUASH SERVICE

Comes now the defendant, Thompson-Hayward Chemical Company, a corporation, and appearing specially and only for the purpose of making this motion, moves the Court to quash and vacate the service of the complaint made upon the Secretary of the State of Alabama on April 21, 1961, by the Sheriff of Montgomery County, Alabama, and as grounds for such motion, this defendant says that at the time of the accrual of the cause of action and at the time of the institution of said suit, and at the time of the alleged service of said Complaint, and now, it was not, and is not doing business in the State of Alabama and did not and has not during said times, ever performed any character of work or service in this state, within the purview of Title 7, Sec. 199 (1), 1940 Code of Alabama, as recompiled.

FILED  
MAY 18 1961  
ALICE J. DUCK, CLERK  
REGISTER

*W. C. Boone Jr.*  
Attorneys for Thompson-Hayward  
Chemical Company, a corporation,  
appearing specially for the purpose  
of this motion.

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

PAUL CHILDRESS, JR. and	)	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	)	
	)	
Plaintiffs,	)	BALDWIN COUNTY, ALABAMA
vs.	)	
	)	
THOMPSON-HAYWARD CHEMICAL	)	AT LAW
COMPANY, a corporation,	)	
ET AL,	)	
	)	
Defendants.	)	CASE NO. _____

D E M U R R E R

Comes now the defendant Thompson-Hayward Chemical Company, a corporation, in the above styled cause, and demurs to the plaintiffs' last amended complaint, and to each count thereof, separately and severally, and, in support thereof, refiles those separate and several grounds of demurrer previously filed by this defendant to the original complaint, separately and severally, and assigns, separately and severally, the following additional separate and several grounds:

18. It does not appear therefrom what representations of this defendant the plaintiffs allegedly relied upon.

19. For aught that appears the plaintiffs had no right to rely upon any alleged representations of this defendant.

20. For aught that appears, this defendant properly labeled the product allegedly sold and warned plaintiffs of how it should be used.

21. For aught that appears, this defendant properly labeled the product allegedly sold by it and gave proper instructions as to its use on such label.

22. For aught that appears this defendant warned the plaintiffs that the product allegedly sold by it was dangerous to dairy cattle.

23. For that it does not appear what instructions were given by the defendant.

24. For that it does not appear what instructions were given by this defendant.

25. For that it affirmatively appears that instructions were not given to both plaintiffs.

26. For that said count does not state a good cause of action in favor of both plaintiffs.

27. For that no facts are alleged showing that both plaintiffs were injured as a result of the alleged negligence of the defendant.

28. For that the allegation that said solution was applied "in accordance with instructions given to him by the defendant" constitutes merely the conclusion of the pleader.

29. For that the allegation that the damages of the Plaintiffs were the result "of the negligence of the defendant in negligently distributing, marketing, offering for sale and selling said solution of an inherently dangerous and toxic nature" constitutes merely a conclusion of the pleaders, insufficient facts being alleged in support thereof.

30. Said complaint is vague, ambiguous and uncertain in that it is not alleged when said solution allegedly drifted or floated upon said pasture.

31. Said complaint is vague, ambiguous, and uncertain in that it is not alleged when said damage occurred.



32. For that it affirmatively appears that said action is barred by the statute of limitations.

33. For that it affirmatively appears that this action was not commenced within the time allowed by law for the commencement thereof.

34. For aught appearing, this action was not commenced within the time allowed by law for the commencement thereof.

35. For that the inference that the defendants "knew or should have known that if any of said solution was consumed by dairy cattle that they would die as a result thereof" is an inference of fact, unsupported by sufficient allegation of fact.

36. For aught appearing, the application of said solution to said crop was made contrary to the instructions of this defendant.

37. For that no facts are alleged showing that each of the plaintiffs had any right to rely on the instructions given by this defendant.

38. For that it affirmatively appears that both plaintiffs did not rely on the alleged instructions given by this defendant.

39. No facts are alleged to show that the plaintiffs sustained any damage or injury as the proximate result or breach of duty on the part of this defendant.

40. It affirmatively appears that the damage allegedly suffered was the result of a proximate cause intervening between such damage and the alleged negligence of this defendant.

41. For that there is no allegation that Defendants Bertolla, or any of them, were or was the agent of Defendant Thompson-Hayward Chemical Company.

42. For that the allegation that said product was inherently dangerous is merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

43. For that there is no allegation that the Plaintiff Joy Childress purchased or received any instructions pertaining to the use of said product.

44. For that said count does not state a good cause of action as to each of the Defendants.

45. For that said count is vague, ambiguous and uncertain, in that it does not appear which Defendant Bertolla gave instructions to Paul Childress, Jr. concerning the application of said product.

46. For that the allegation that said solution was applied to said crop " in accordance with instructions given to him by the Defendant Bertolla" is merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

47. For that there is no allegation of what said instructions allegedly given by Defendant Bertolla consisted.

48. For that said instructions are not set forth.

49. For that no facts are set forth showing how said solution was applied.

50. For aught appearing, said instructions allegedly given by Defendant Bertolla were to the effect that said solution should not be applied so that it would drift or float into and upon any pasture where cattle might eat it.

51. For aught appearing, Plaintiffs were instructed concerning the dangerous nature of said product.

52. For that there is no allegation that said drum was not properly labeled or stamped.

53. For aught appearing, said drum was properly labeled or stamped so as to warn any user thereof of the nature of its contents.

54. For that there is no allegation that said drum was not labeled or stamped by this Defendant, at the time that it was sold or distributed to Defendants Bertolla.

55. For that it affirmatively appears that the negligence of Defendants Bertolla, if any, constituted the proximate cause of the damages claimed by Plaintiffs, and that such proximate cause intervened between such damages and the alleged negligence of this Defendant.

Paul W. Brock

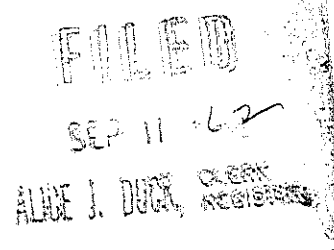
Attorneys for Defendant, Thompson-  
Hayward Chemical Company

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

Defendant respectfully demands a jury trial.

Paul W. Brock



PAUL CHILDRESS, JR., and  
JOY CHILDRESS,

Plaintiffs,

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation,  
and ANGELO BERTOLLA, ALEX  
S. BERTOLLA, R. F. BERTOLLA  
and J. F. BERTOLLA, in-  
dividually and doing busi-  
ness as A. BERTOLLA & SONS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Come now the Plaintiffs in the above styled cause, by  
their attorneys, and amend their complaint so that the same shall  
read as follows:

COUNT ONE:

The Plaintiffs claim of the Defendants the sum of Five  
Thousand Five Hundred Dollars (\$5,500.00) as damages in this: the  
Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and  
R. F. Bertolla, individually and doing business as A. Bertolla &  
Sons, were in the month of May, 1960, marketers, distributors or  
dealers in Baldwin County, Alabama, of agricultural chemicals  
manufactured and marketed by the Defendant Thompson-Hayward Chemi-  
cal Company. That among the products manufactured and sold by the  
Defendant Chemical Company and sold, marketed, distributed by the  
Defendants Bertolla in Baldwin County, Alabama, in May, 1960, was  
a product sold, marketed or distributed under the brand name of  
"Swan Brand, Sodium Arsenite, Solution #40" which the said Defen-  
dants advertised and represented to be suitable and proper to kill  
potato vines to facilitate harvesting. That said product contain-  
ed 39.12% sodium arsenite by weight and was an inherently dangerous  
and toxic chemical compound or solution, all of which was known,  
or should have been known, to the Defendants. That the Plaintiff  
Paul Childress, Jr., relying upon the representations of the De-  
fendants, purchased a quantity of said "Swan Brand, Sodium Arse-  
nite, Solution #40" for application by him to a potato crop then  
owned by him to kill the potato vines for the purpose of facili-  
tating the harvest of his potato crop, and he did apply such solu-

tion to his said crop in accordance with the instructions given to him by the Defendants. And the Plaintiffs further allege that during the application of said solution to said crop that a portion of the same drifted or floated out of the field in which said crop was located into and upon a pasture located adjacent thereto wherein the Plaintiffs grazed their dairy herd and said solution settled upon the grass located in such pasture. And the Plaintiffs further allege that a number of their dairy cattle ate the grass upon which some of such solution had settled and as a proximate result of the eating of such inherently dangerous or toxious solution, the Plaintiffs were damaged in this: a number of their cows died from sodium arsenite poisoning and they were caused to incur, and did incur, veterinary bills and medical bills in the treatment of their said animals in an attempt to prevent their death. And the Plaintiffs allege that all of their damages, aforesaid, were a proximate result and consequence of the negligence of the Defendants in negligently distributing, marketing, offering for sale and selling said solution of an inherently dangerous and toxic nature while they knew, or should have known, that if any of said solution was consumed by dairy cattle that they would die as a result thereof. All to the damage of the Plaintiffs, wherefore they bring this suit and ask judgment in the above amount.

CHASON & STONE

By:   
Attorneys for Plaintiffs

Plaintiffs demand a trial of  
this cause by a jury.

CHASON & STONE

By:   
Attorneys for Plaintiffs

**FILED**

SEP 6 - 1962

WILLIAM J. DUCK, CLERK

CHASON & STONE  
ATTORNEYS AT LAW  
BAY MINETTE, ALABAMA

PAUL CHILDRESS, JR. AND  
JOY CHILDRESS,  
  
Plaintiffs,  
  
Vs.  
  
THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation,  
et al,  
  
Defendants.

X  
X  
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X  
X  
X  
X  
X  
X

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
  
AT LAW  
  
CASE NO. \_\_\_\_\_

Comes now the Defendants, Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, and files the following additional pleas to each and every count of the Complainants' Complaint as last amended, separately and severally:

3.

That at the time and place complained of, the Plaintiffs were guilty of negligence which proximately contributed to the injuries and damages for which they complain, hence, they ought not to recover. The Plaintiffs were negligent in that on, to-wit, May 31st or June 1st of 1960, the Plaintiffs obtained a drum of the product described in their bill of complaint, which said drum, at the time the same was obtained, was labeled and this label clearly stated that the product should be kept away from animals and that animals should not have access thereto; that the Plaintiffs did negligently spray, or allow to be sprayed, this product very near the place where their cattle were grazing; that the Plaintiffs' cattle consumed said product and were injured when Plaintiffs knew or, in the exercise of ordinary care, should have known that such cattle would likely consume such product and be injured.

4.

Plaintiffs ought not to recover from these Defendants in this cause for that shortly before the time complained of in the Complaint, the product complained of was obtained or purchased in a barrell bearing a label which clearly warns that said product

should be kept away from animals, and further that animals should not have access to such solution, to said container or to water treated with said solution. Nonetheless, the Plaintiffs who knew or should have known the foregoing so negligently sprayed or allowed to be sprayed said solution in a manner as to allow part of it to be consumed by their cattle as complained of in the complaint, and the Plaintiffs proximately contributed to the damages of which they claim, and hence ought not to recover against these Defendants.

WILTERS & BRANTLEY

BY: Robert M Brantley  
Attorney for the Defendants





PAUL CHILDRESS, JR.	)	IN THE CIRCUIT COURT OF
and JOY CHILDRESS,	)	
	)	
Plaintiffs,	)	BALDWIN COUNTY, ALABAMA
	)	
vs.	)	
	)	
THOMPSON-HAYWARD CHEMICAL	)	AT LAW
COMPANY, a corporation,	)	
ET AL,	)	
	)	
Defendants.	)	CASE NO. _____

Comes now the defendant Thompson-Hayward Chemical Company, a corporation, in the above styled cause, and for answer to the complaint heretofore filed and to each count thereof, separately and severally, interposes the following separate and several pleas:

ONE

Not guilty.

TWO

The material allegations thereof are untrue.

THREE

At the time and place complained of, the plaintiffs themselves were guilty of negligence which proximately contributed to the damages of which they complain and hence they ought not recover against this defendant.

FOUR

At the time and place complained of, the plaintiffs themselves were guilty of negligence which proximately

contributed to the injuries and damages of which they complain and, hence, they ought not recover. Said negligence consisted of the following: On or about, to-wit, May 31 or June 1, 1960, the plaintiffs negligently sprayed or caused to be sprayed the product complained of on a field near pasture land upon which the plaintiffs' cows were grazing or were to graze. At the time of said spraying, a wind was blowing from such a direction and in such a manner that it was apparent or, in the exercise of reasonable care, should have been apparent, that said product would float or drift onto said pasture. Plaintiffs knew, or in the exercise of ordinary care, should have known that said product would be likely to injure any cows eating the same, but nonetheless sprayed or caused said product to be sprayed as aforesaid. Hence, plaintiffs ought not recover against this defendant.

FIVE

At the time and place complained of, the plaintiffs themselves were guilty of negligence which proximately contributed to the injuries and damages of which they complain and hence they ought not recover. The plaintiffs' negligence consisted in this: On, to-wit, May 31 or June 1, 1960, the plaintiffs purchased or caused to be purchased a drum of the product complained of, which said drum was, at the time of said purchase, labeled

by this defendant and which label clearly stated that such product should be kept away from animals and that animals should not have access thereto; thereafter plaintiffs did negligently spray or allow to be sprayed such product in close proximity to land where their cattle were grazing, so that such cattle consumed said product and were injured, all when plaintiffs knew or in the exercise of ordinary care, should have known, that such cattle would likely consume a portion of such product and be injured.

SIX

At the time and place complained of, on, to-wit, May 31 or June 1, 1960, the plaintiffs themselves assumed the risk of the damage complained of by spraying or allowing to be sprayed the product complained of upon a field near or adjacent to a pasture where they knew their cattle were grazing or were to graze, and at a time when they knew, or in the exercise of reasonable care should have known, that this would be likely to injure some or all of said cattle, which it did; hence, plaintiffs ought not recover against this defendant.

SEVEN

The plaintiffs ought not recover of this defendant in this cause for that, shortly before the time complained

of in the complaint, the product complained of was purchased in a barrel or container bearing a label, a true copy of which is attached hereto as Exhibit "A", which label contained the clear warning that said Swan Brand Sodium Arsenite Solution No. 40 should be kept away from animals, and, further, that animals should not have access to such solution, to said container or to water treated with such solution. Nonetheless, the plaintiffs, who knew or who should have known the foregoing, so negligently sprayed or allowed to be sprayed said solution in such a manner as to allow it to be consumed by their cattle, as complained of in the complaint, and plaintiffs thereby proximately contributed to the damages of which they complain and, hence, they ought not recover against this defendant.

EIGHT

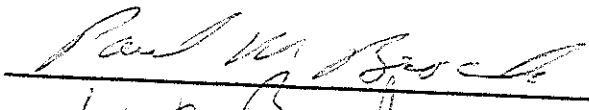
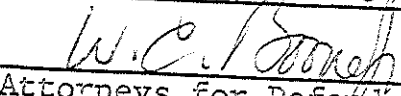
Plaintiffs ought not recover in this cause against this defendant for that, shortly before the time complained of, said solution was purchased in a drum or container bearing a label, a true copy of which is attached hereto as Exhibit "A", which said exhibit provides, in part, as follows:

"Neither Thompson-Hayward Chemical Company nor seller shall be held responsible for damages resulting from the handling, storage or use of this product for any reason except the failure of the material to conform to the chemical description on this label."

Defendant alleges that plaintiffs accepted and became bound by said provisions as above set forth, and that the damage complained of did not result from the failure of said material to conform to said chemical description but that, on the contrary, said material did conform to said chemical description on said label.

NINE

Plaintiffs ought not recover of this defendant in this cause because, at the time and place complained of, the plaintiff, Paul Childress, Jr., did so negligently spray said solution upon a field near or adjacent to the pasture in which said cattle grazed or were to graze as to cause or allow a portion of said solution to drift or float onto said pasture, where it was consumed by said dead cattle. This negligence of said Paul Childress, Jr., as above described, constituted the proximate cause of the damages complained of and intervened between the alleged negligence of this defendant and said damages and, hence, the plaintiffs ought not recover from this defendant.

  
  
Attorneys for Defendant, Thompson-  
Hayward Chemical Company

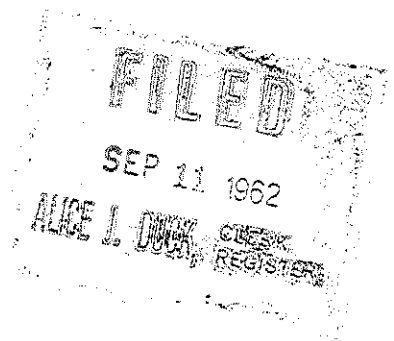
Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

This defendant respectfully demands a trial of this  
cause by jury.

Paul W. Brock

W. C. Boone



PAUL CHILDRESS, JR. AND  
JOY CHILDRESS,

Plaintiffs,

Vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation,  
et al,

Defendants.

X  
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X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. \_\_\_\_\_

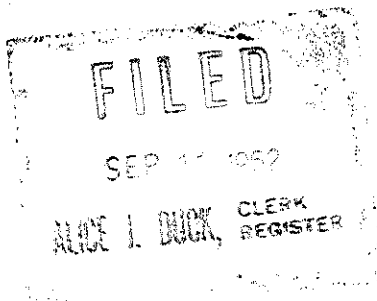
Comes now the Defendants, Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, and files the following pleas to the Complainants Amended Complaint:

1.

Not Guilty.

2.

The Defendants say further that the Plaintiffs should not be allowed to recover in this cause for at the place and time alleged in the Plaintiffs' Amended Complaint, said Plaintiffs were negligent themselves, and that the death of their cattle was caused by their own contributory negligence. The Defendants say the Plaintiffs knew or should have known that Sodium Arsenite was poisonous and that he was negligent in putting the same on his potato crop when the wind was blowing enough to cause the same to go out of the potato field into another area; that the aforesaid negligence of the Plaintiffs was the cause of his loss, hence, he should not be allowed to recover from the Defendants.



WILTERS & BRANTLEY

BY:

*Robert M. Brantley*  
Attorney for the Defendants



PAUL CHILDRESS, JR. and	X	
JOY CHILDRESS,		
	X	IN THE CIRCUIT COURT OF
Plaintiffs,		
	X	BALDWIN COUNTY, ALABAMA
vs		
	X	AT LAW
THOMPSON-HAYWARD CHEMICAL		
COMPANY, a Corporation,	X	NO. 4686
et al,		
	X	
Defendants		
	X	

Comes now the Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and R. F. Bertolla, individually and doing business as A. Bertolla & Sons, in the above cause, and demurs to the Plaintiffs' Complaint as last amended and to each count thereof, separately and severally, the following separate and several grounds:

1. For aught appearing, this Defendant gave proper warning of the inherently dangerous nature of said product.

2. For aught appearing, said product was not applied in accordance with instructions given by this Defendant.

3. For that there is no allegation that this defendant did not warn all persons who might reasonably be expected to use said product of the alleged inherently dangerous nature of said product.

4. For that the allegation that said product was an "inherently dangerous and toxic chemical compound or solution" constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

5. For that the allegation that the alleged inherently dangerous nature of said solution "should have been known" to this Defendant constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

60-Q

6. For that if affirmatively appears that said solution was so applied as to come into contact with the pasture for which it was not intended.

7. For that said count does not state a good cause of action as to all plaintiffs.

8. For that said count does not state a good cause of action as against all Defendants.

9. For that it affirmatively appears that there is no privity of contract between this defendant and the Plaintiff Joy Childress.

10. For aught appearing, sodium arsenite is a non-toxic and non-dangerous chemical compound or solution.

11. For the allegation that said product was "an inherently dangerous and toxic chemical compound or solution" constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

12. For that it affirmatively appears that said product or solution was improperly used or applied by the Plaintiffs.

13. For that no facts are alleged showing that the Plaintiff, Paul Childress, Jr., was acting as an agent, servant or employee of the Plaintiff, Joy Childress, within the line and scope of his agency, service or employment, when he purchased said solution or product.

14. For aught appearing, the drum in which said product was contained when it was sold to the Plaintiff, Paul Childress, Jr., was not the drum in which said product was contained when it was manufactured and marketed by the Defendant.

60-R

15. For aught it appears, the product sold by this Defendant was properly labeled and warned the Plaintiffs of how it should be used.

16. For aught that appears this Defendant warned the Plaintiffs that the product allegedly sold by it was dangerous to dairy cattle.

17. For that it does not appear what instructions were given by the Defendant.

18. For that it does not appear what instructions were given by this Defendant.

19. For that it affirmatively appears that instructions were not given to both Plaintiffs.

20. Said complaint is vague, ambiguous and uncertain in that it is not alleged when said solution allegedly drifted or floated upon said pasture.

21. Said complaint is vague, ambiguous and uncertain in that it is not alleged when said damage occurred.

22. For that it affirmatively appears that said action is barred by the statute of limitations.

23. For that it affirmatively appears that this action was not commenced within the time allowed by law for the commencement thereof.

24. For aught appearing, the application of said solution to said crop was made contrary to the instructions of this Defendant.

25. No facts are alleged to show that the Plaintiffs sustained any damage or injury as the proximate result or breach of duty on the part of this Defendant.

26. It affirmatively appears from the complaint that the Plaintiffs were guilty of contributory negligence.

27. It affirmatively appears from the complaint that the injuries and damages of which the Plaintiffs complain were caused by their own negligence.

28. For that there is no allegation that the Plaintiffs were using said product in the usual and customary manner for which it was intended.

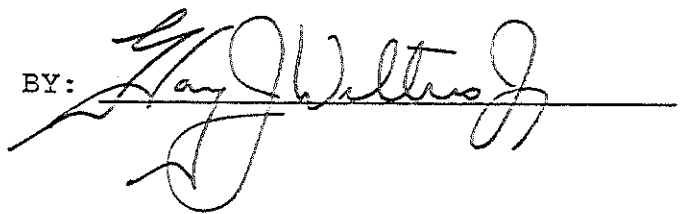
29. For that no facts are alleged showing that the Plaintiffs used said product at the time and place described in said count in the usual and customary manner for which it was intended.

30. For that said count is vague, ambiguous and uncertain in that it cannot be determined therefrom how long after, to-wit, May, 1960, said solution or product was applied to the potato crop.

WILTERS & BRANTLEY

FILED  
MAY 13 1965  
ALICE J. DUCK, CLERK  
REGISTER

BY:



PAUL CHILDRESS, JR., and  
JOY CHILDRESS,

Plaintiffs,

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, A Corporation,  
Et Al.,

Defendants.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4686

AMENDED COMPLAINT

Come now the Plaintiffs in the above styled cause, by their Attorneys, and amend their complaint so that the same shall read as follows:

COUNT ONE:

The Plaintiffs claim of the Defendants the sum of Five Thousand Five Hundred Dollars (\$5,500.00) as damages in this: the Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and R. F. Bertolla, individually and doing business as A. Bertolla & Sons, were in the month of May, 1960, marketers, distributors or dealers in Baldwin County, Alabama, of agricultural chemicals manufactured and marketed by the Defendant Thompson-Hayward Chemical Company. That among the products manufactured and sold by the Defendant Chemical Company and sold, marketed or distributed by the Defendant A. Bertolla & Sons in Baldwin County, Alabama, in May, 1960, was a product sold, marketed or distributed under the brand name of "Swan Brand, Sodium Arsenite, Solution #40"; that said product contained 50.8% arsenite by weight and was inherently dangerous and toxic chemical compound or solution, all of which was known, or should have been known, to the Defendants. That the Plaintiff Paul Childress, Jr., purchased a quantity of said "Swan Brand, Sodium Arsenite, Solution #40" from the Defendant A. Bertolla & Sons for application by him to a potato crop then owned by him to kill the potato vines for the purpose of facilitating the harvest of his potatoe crop, and he did apply

Vol-37 p. 60-A

such solution to his said crop in accordance with the instruction given to him by the Defendant A. Bertolla & Sons. And the Plaintiffs further allege that during the application of said solution to said crop that a portion of the same drifted or floated out of the field in which said crop was located into and upon a pasture located adjacent thereto wherein the Plaintiffs grazed their dairy herd and said solution settled upon the grass located in such pasture. And the Plaintiffs further allege that a number of their dairy cattle ate the grass upon which some of such solution had settled and as a proximate result of the eating of such inherently dangerous or toxious solution the Plaintiffs were damaged in this: nine of their cows died from sodium arsenite poisoning and two of them were rendered of no value whatsoever, and they were caused to incur, and did incur, veterinary bills and medical bills in the treatment of their said animals in an attempt to prevent their death or injury from said poisoning and the Plaintiffs allege that all of their damages, aforesaid, were a proximate result and consequence of the negligence of the Defendants in failing to warn the Plaintiffs of the inherently dangerous nature of said product. All to the damage of the Plaintiffs, wherefore they bring this suit and ask judgment in the above amount.

COUNT TWO

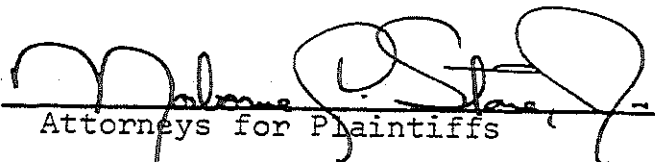
The Plaintiffs claim of the Defendants the sum of Five Thousand Five Hundred Dollars (\$5,500.00) as damages in this: the Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and R. F. Bertolla, individually and doing business as A. Bertolla & Sons, were in the month of May, 1960, marketers, distributors or dealers in Baldwin County, Alabama, of agricultural chemicals manufactured and marketed by the Defendant Thompson-Hayward Chemical Company. That among the products manufactured or distributed by the Defendants Bertolla in Baldwin County, Alabama, in May,

60-B

1960, was a product sold, marketed or distributed under the brand name of "Swan Brand, Sodium Arsenite, Solution #40"; that said product contained 50.8% sodium arsenite by weight and was an inherently dangerous and toxic chemical compound or solution, all of which was known, or should have been known, to the Defendants. That the Plaintiff Paul Childress, Jr., purchased a quantity of said "Swan Brand, Sodium Arsenite, Solution #40" from the Defendants A. Bertolla & Sons for application by him to a potato crop then owned by him to kill the potato vines for the purpose of facilitating the harvest of his potato crop, and he did apply such solution to his said crop in accordance with the instruction given to him by the Defendant Bertolla. And the Plaintiffs further allege that during the application of said solution to said crop that a portion of the same drifted or floated out of the field in which said crop was located into and upon a pasture located adjacent thereto wherein the Plaintiffs grazed their dairy herd and said solution settled upon the grass located in such pasture. And the Plaintiffs allege that a number of their dairy cattle ate the grass upon which some of such solution had settled and as a proximate result of the eating of such inherently dangerous or toxic solution the Plaintiffs were damaged in this: nine of their cows died from sodium arsenite poisoning and two of them were rendered of no value whatsoever and they were caused to incur, and did incur, veterinary bills and medical bills in the treatment of their said animals in an attempt to prevent their death or injury from said poisoning and the Plaintiffs allege that all of their damages, aforesaid, were a proximate result and consequence of the negligence of the Defendants in failing to properly label or stamp the drum in which said product was contained and in which it was sold to the Plaintiff Paul Childress, Jr., so as to warn him of the inherently dangerous and toxic nature of said product and that it would cause injury and damage to livestock if such livestock ate

foliage on which said product might settle, all to the damage of the Plaintiffs, wherefore they bring this suit and ask judgment in the above amount.

CHASON, STONE & CHASON

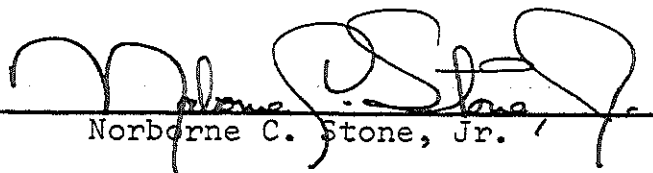
By:   
Attorneys for Plaintiffs

STATE OF ALABAMA

BALDWIN COUNTY

I, Norborne C. Stone, Jr., one of the attorneys for the Plaintiffs in the above styled cause, do hereby certify that I have this day served a copy of the foregoing amended complaint upon Hon. Paul W. Brock, one of the attorneys for the Defendant Thompson-Hayward Chemical Company, a corporation, and upon Hon. Tolbert M. Brantley, one of the attorneys for the Defendants Angelo Bertolla, et al., by mailing a copy to each of them by United States Mail, postage prepaid, and properly addressed to them at their offices in Mobile, Alabama, and Bay Minette, Alabama, respectively.

Witness my hand this 25<sup>th</sup> day of January, 1965.

  
Norborne C. Stone, Jr.

FILED

JAN 25 1965

ALICE J. DUCK, CLERK  
REGISTER

60-D



We the jury find for the plaintiffs  
against the defendant Thomas Hayward Corp.  
for the amount of \$5500.00

John H. Evans

4626

FILED

APR 20 1965

APR 1 1965

PAUL CHILDRESS, JR. and : IN THE CIRCUIT COURT OF  
JOY CHILDRESS, :  
Plaintiffs, : BALDWIN COUNTY, ALABAMA  
vs. : AT LAW  
THOMPSON-HAYWARD CHEMICAL :  
COMPANY, a corporation, :  
et al., :  
Defendants. : No. 4686

D E M U R R E R

Comes now the defendant Thompson-Hayward Chemical Company, a corporation, in the above cause, and demurs to the plaintiffs' complaint as last amended and to each count thereof, separately and severally, and in support thereof, assigns, separately and severally, the following separate and several grounds:

1. For aught appearing, this defendant gave proper warning of the inherently dangerous nature of said product.
2. For that it affirmatively appears that the said product was applied in accordance with the instructions given to the plaintiff by someone other than this defendant.
3. For aught appearing, said product was not applied in accordance with instructions given by this defendant.
4. For that there is no allegation that this defendant did not warn all persons who might reasonably be

expected to use said product of the alleged inherently dangerous nature of said product.

5. For that no facts are alleged to show that the plaintiffs were such persons as might reasonably be expected to use said product.

6. For that the allegation that said product was an "inherently dangerous and toxic chemical compound or solution" constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

7. For that each alternative allegation does not state a good cause of action against this defendant.

8. For that the allegation that the alleged inherently dangerous nature of said solution "should have been known" to this defendant constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

9. For that no facts are alleged to show that defendant A. Bertolla & Sons was the agent, servant or employee of this defendant, acting within the line and scope of its agency, service or employment as such, when it gave the instructions to the plaintiff as to the application of said solution.

10. For aught appearing, when A. Bertolla & Sons instructed the plaintiff as to the application of said solution to plaintiff's said crop, such defendant was not the agent, servant or employee of this defendant, acting within

LOF

the line and scope of its agency, service or employment as such.

11. For aught appearing, the instructions allegedly given by the defendant A. Bertolla & Sons pertaining to the application of said solution were not authorized by this defendant.

12. For that it affirmatively appears that said solution was so applied as to come into contact with the pasture for which it was not intended.

13. For that said count does not state a good cause of action as to all plaintiffs.

14. For that said count does not state a good cause of action as against all defendants.

15. For that there is a misjoinder of parties plaintiff.

16. For that there is a misjoinder of parties defendant.

17. For that it affirmatively appears that there is no privity of contract between this defendant and the plaintiffs.

18. For that it affirmatively appears that there is no privity of contract between this defendant and the plaintiff Joy Childress.

19. For that it affirmatively appears that there is

60-2

no privity of contract between this defendant and the plaintiff Paul Childress, Jr.

20. For aught appearing, sodium arsenite is a non-toxic and non-dangerous chemical compound or solution.

21. For the allegation that said product was "an inherently dangerous and toxic chemical compound or solution" constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

22. For that it affirmatively appears that said product or solution was improperly used or applied by the plaintiffs.

23. For that no facts are alleged showing that the plaintiff, Paul Childress, Jr., was acting as an agent, servant or employee of the plaintiff, Joy Childress, within the line and scope of his agency, service or employment, when he purchased said solution or product.

24. For aught appearing, the drum in which said product was contained when it was sold to the plaintiff Paul Childress, Jr. was not the drum in which said product was contained when it was manufactured and marketed by this defendant.

25. For aught that appears, this defendant properly labeled the product allegedly sold and warned plaintiffs of how it should be used.

26. For aught that appears, this defendant properly

60-A

labeled the product allegedly sold by it and gave proper instructions as to its use on such label.

27. For aught that appears this defendant warned the plaintiffs that the product allegedly sold by it was dangerous to dairy cattle.

28. For that it does not appear what instructions were given by the defendant.

29. For that it does not appear what instructions were given by this defendant.

30. For that it affirmatively appears that instructions were not given to both plaintiffs.

31. For that no facts are alleged showing that both plaintiffs were injured as a result of the alleged negligence of the defendant.

32. For that the allegation that said solution was applied in accordance with instructions given by the defendant A. Bertolla & Sons constitutes merely the conclusion of the pleader, insufficient facts being alleged in support thereof.

33. Said complaint is vague, ambiguous and uncertain in that it is not alleged when said solution allegedly drifted or floated upon said pasture.

34. Said complaint is vague, ambiguous and uncertain in that it is not alleged when said damage occurred.

35. For that it affirmatively appears that said action is barred by the statute of limitations.

36. For that it affirmatively appears that this action was not commenced within the time allowed by law for the commencement thereof.

37. For aught appearing, this action was not commenced within the time allowed by law for the commencement thereof.

38. For aught appearing, the application of said solution to said crop was made contrary to the instructions of this defendant.

39. No facts are alleged to show that the plaintiffs sustained any damage or injury as the proximate result or breach of duty on the part of this defendant.

40. It affirmatively appears that the damage allegedly suffered was the result of a proximate cause intervening between such damage and the alleged negligence of this defendant.

41. That it does not state facts sufficient to constitute a cause of action against this defendant.

42. For that negligence is therein alleged merely as a conclusion of the pleader.

43. For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence the defendant is called on to defend.

44. For that it does not appear with sufficient certainty what duty, if any, this defendant may have owed to the plaintiffs.

45. For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by defendant to the plaintiffs.

46. For that it does not sufficiently appear that this defendant owed any duty to the plaintiffs which defendant negligently failed to perform.

47. For that the averments set up, if true, do not show any liability on the part of this defendant.

48. For that the pleaders have endeavored to set out in what said negligence consisted, and the facts so set out do not show negligence.

49. No facts are alleged to show that plaintiff sustained any damage or injury as the proximate result of any negligence or breach of duty on the part of this defendant.

50. It is not alleged that the negligence complained of proximately caused the accident and the injuries and damages complained of.

51. For that said count is duplicitous.

52. For that each injury complained of in the alternative could not result from each alternative act allegedly causing such injury.

53. For that each alternative averment does not state facts sufficient to constitute a cause of action against

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this defendant.

54. For that there is a misjoinder of causes of action.

55. It affirmatively appears from the complaint that the plaintiffs were guilty of contributory negligence.

56. It affirmatively appears from the complaint that the injuries and damages of which the plaintiffs complain were caused by their own negligence.

57. For that no facts are alleged showing any relationship between the plaintiffs and this defendant giving rise to any duty breached by this defendant.

58. For that it affirmatively appears that there were no contractual relations between the plaintiffs and this defendant.

59. For that no facts are alleged showing that this defendant owed any duty to warn the plaintiffs of the alleged inherently dangerous nature of said product or solution.

60. For aught appearing, said solution actually used by the plaintiff Paul Childress, Jr. was manufactured and marketed by someone other than this defendant.

61. For aught appearing, there are many manufacturers and marketers of "Swan Brand, Sodium Arsenite, Solution #40" and this particular solution applied by the plaintiff

Paul Childress, Jr. was manufactured and marketed by someone other than this defendant.

62. For that there is no allegation that this defendant manufactured and put on the market the particular substance which the plaintiff Paul Childress, Jr. allegedly purchased and applied to his potato crop.

63. For that said count is vague, ambiguous and uncertain.

64. For that the averments set up, if true, do not show any liability on the part of this defendant.

65. For that said count attempts to allege two different causes of action.

66. For that no facts are alleged showing that this defendant knew or should have known that said product was inherently dangerous, as alleged.

67. For that no facts are alleged showing any privity of contract between the plaintiffs and this defendant.

68. For that there is no allegation that the plaintiffs were using said product in the usual and customary manner for which it was intended.

69. For that no facts are alleged showing that the plaintiffs used said product at the time and place described in said count in the usual and customary manner for which it was intended.

70. For that no facts are alleged to show that this defendant owed the plaintiffs any duty to warn them that said product was inherently dangerous.

71. For that said count is vague, ambiguous and uncertain in that it cannot be determined therefrom how long after, to-wit, May, 1960, said solution or product was applied to the potato crop.

72. For aught appearing, said product was not inherently dangerous at the time that it was sold by this defendant.

73. For that said count is vague, ambiguous and uncertain in that it cannot be determined therefrom how long prior to, to-wit, May, 1960, said product was manufactured and marketed by this defendant.

74. For that there is no allegation that said product was in the same condition at the time that the plaintiff Paul Childress, Jr. purchased it from the defendant A. Bertolla & Sons as it was at the time that this defendant allegedly marketed and sold it.

75. For aught appearing, there was nothing about said product which charged this defendant with knowledge or notice that injury or damage might result from its use.

76. For that it affirmatively appears that the negligence charged is based upon an alleged breach of duty arising out of contractual relations, and no facts are alleged to show that the plaintiffs enjoyed a contractual

CON

relationship with this defendant.

77. For that the manner in which said product was applied is not set forth and no facts are alleged showing that this defendant could have reasonably anticipated that injury or damage might have resulted from the use of said product in such manner.

78. For that no facts are alleged to show that the injuries complained of should have been reasonably anticipated by this defendant.

79. For that no facts are alleged showing that this defendant had any notice or knowledge of the alleged inherent danger of said product.

80. For that said count is vague, ambiguous and uncertain in that it fails to state when said product was manufactured by this defendant, and, for aught appearing, said product became inherently dangerous only after it was manufactured and distributed by this defendant.

81. For that no facts are alleged showing that this defendant had, or exercised any degree of control over, said product at the time and place upon which it is alleged that the plaintiff Paul Childress, Jr. purchased the same.

82. For that it affirmatively appears that said action is barred by the provisions of Title 7, Section 26, Code of Alabama, 1940, as last amended.

83. For that there is a misjoinder of causes of action.

Paul W. Brock

622 First National Bank Building  
Mobile, Alabama  
Paul Brock, Attorney for Defendant  
Thompson-Hayward Chemical Company

Of Counsel:

HAND, ARENDALL, BEDSOLE,  
GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing demurrer to Norborne C. Stone, Jr., Esq., Attorney for Plaintiff, by depositing a copy of same in the United States Mail, postage prepaid, addressed to said attorney at his office in Bay Minette, Alabama on this, the 19<sup>th</sup> day of April, 1965.

Paul Brock

FILED

APR 20 1965

ALICE J. DICK, CLERK  
REGISTERED

60-P

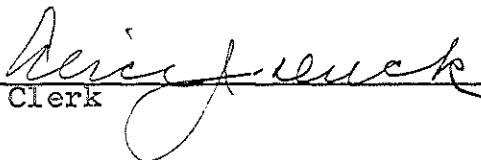
STATE OF ALABAMA )  
 )  
BALDWIN COUNTY )

IN THE CIRCUIT COURT - LAW SIDE

TO: ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Thompson-Hayward Chemical Company, a corporation, and Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla, individually and doing business as A. Bertolla & Sons, to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of Paul Childress and Joy Childress.

Witness my hand this the 19 day of April, 1961.

  
Clerk

PAUL CHILDRESS, JR., and  
JOY CHILDRESS,  
  
Plaintiffs,

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, a corporation, and  
ANGELO BERTOLLA, ALEX S.  
BERTOLLA, R. F. BERTOLLA and  
J. F. BERTOLLA, individually  
and doing business as A.  
BERTOLLA & SONS,

Defendants.

IN THE CIRCUIT COURT OF  
  
BALDWIN COUNTY, ALABAMA

AT LAW

721.4686

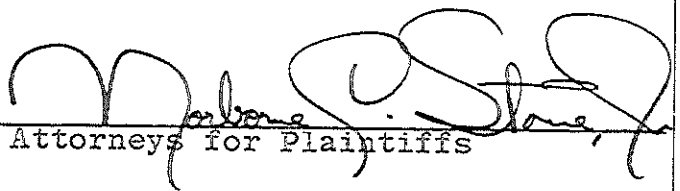
COUNT ONE:

The Plaintiffs claim of the Defendants the sum of Nine Thousand Five Hundred Dollars (\$9,500.00) as damages in this: the Defendant Thompson-Hayward Chemical Company is engaged in the manufacture, sale and distribution of industrial and agricultural chemicals in the State of Alabama and the marketing of the same through agents or licensed dealers in Baldwin County, Alabama, and was so engaged during the month of May, 1960. That the Defendants Angelo Bertolla, J. F. Bertolla, Alex S. Bertolla and R. F. Bertolla, individually and doing business as A. Bertolla & Sons, were in the month of May, 1960, marketers, distributors or dealers in Baldwin County, Alabama, of agricultural chemicals of the Defendant Thompson-Hayward Chemical Company, and were at said time the agents of said Defendant Chemical Company. That among the products so sold, marketed, distributed by the Defendants in Baldwin County, Alabama, in May, 1960, was a product sold, marketed or distributed under the brand name of "Swan Brand, Sodium Arsenite, Solution #40" which the Defendants advertised and represented to be suitable and proper to kill potato vines to facilitate harvesting. That said product contained 39.12% sodium arsenite by weight and was an inherently dangerous and toxic chemical compound or solution, all of which was known, or should have been known to the Defendants. That the Plaintiff Paul Childress, Jr., relying upon the representations of the Defendants purchased a quantity of said "Swan Brand, Sodium Arsenite, Solution #40" for application by him to a potato crop then owned by him to kill the potato vines for the purpose of facilitating the harvest of his

potato crop, and he did apply such solution to his said crop in accordance with the instructions given to him by the Defendants. And the Plaintiffs further allege that during the application of said solution to said crop that a portion of the same drifted or floated out of the field in which said crop was located into and upon a pasture located adjacent thereto wherein the Plaintiffs grazed their dairy herd and said solution settled upon the grass located in such pasture. And the Plaintiffs further allege that a number of their dairy cattle ate the grass upon which some of such solution had settled and as a proximate result of the eating of such inherently dangerous or toxious solution the Plaintiffs were damaged in this: eleven (11) of their cows of a value of Four Thousand Five Hundred Dollars (\$4,500.00) died from sodium arsenite poisoning; they were caused to incur and did incur veterinary bills and medical bills in the treatment of their said animals in an attempt to prevent their death in the sum of Eight Hundred and Fifty-nine Dollars (\$859.00); and they were caused to lose the production of milk from said cows for a great period of time and as a result their gross receipts from the sale of milk were reduced to the extent of Three Thousand Dollars (\$3,000.00). And the Plaintiffs allege that all of their damages, aforesaid, were a proximate result and consequence of the negligence of the Defendants negligently distributing, marketing, offering for sale and selling said solution of an inherently dangerous and toxic nature while they knew, or should have known, that if any of said solution was consumed by dairy cattle that they would die as a result thereof. All to the damage of the Plaintiffs, wherefore they bring this suit and ask judgment in the above amount.


CHASON & STONE

By:

  
Attorneys for Plaintiffs

Plaintiffs demand a trial of  
this cause by jury.

CHASON & STONE

  
Attorneys for Plaintiffs

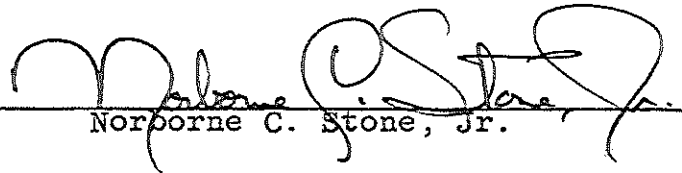


STATE OF ALABAMA

BALDWIN COUNTY

Before me, Julia Brock, a Notary Public, in and for said County in said State, personally appeared Norborne C. Stone, Jr. who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Norborne C. Stone, Jr. and he is one of the attorneys of record for Paul Childress, Jr. and Joy B. Childress, the Plaintiffs in that certain cause this day filed in the Circuit Court of Baldwin County, Alabama, At Law, wherein Thompson-Hayward Chemical Company is one of the Defendants. That said Chemical Company is a corporation having its principal place of business in Kansas City, Missouri, the address of which is 2915 Southwest Boulevard, Kansas City 8, Missouri. That said corporation was doing business in the State of Alabama in the month of May, 1960 and was not at that time qualified under the Constitution and Laws of the State of Alabama as to doing business therein. That this affidavit is made under the provisions of Title 7, Section 199(1) of the Code of Alabama of 1940, recompiled 1958, to be filed in said cause.

  
Norborne C. Stone, Jr.

Sworn to and subscribed before me on  
this the 19<sup>th</sup> day of April, 1961.

  
Notary Public, Baldwin County, Alabama.

FILED

APR 19 1961

ALICE I. DUCK, CLERK  
REGISTER

756

M. 4686

RECEIVED IN OFFICE  
 APR 20 1961  
 M. S. BUTLER, Sheriff

3

Executed by serving 3 copies of  
 the within on Betty Trump  
 Secretary of State of The State of  
 Alabama.

This the 2 day of April 1961

Sheriff of Montgomery County,  
 M. S. Butler,

By Ramona D. S.

The Sheriff claims 2  
 miles at 10c per mile for a total  
 of \$ 20  
 M. S. Butler, Sheriff  
 Montgomery County, Ala.

M. 4686

Paul Chidress Jr  
 and  
 Joy Chidress

VS

Thompson-Hayward  
 Chemical Co. et al

Received 18 day of May 1961

I served a copy of the within Sum  
 on Angelo Bertolla, Alex. S.  
Bertolla, R. F. Bertolla

By service on R. F. Bertolla  
J. B. A. Bertolla & Son

TAYLOR WILKINS, Sheriff  
 BY Edwight Steadman D. S.

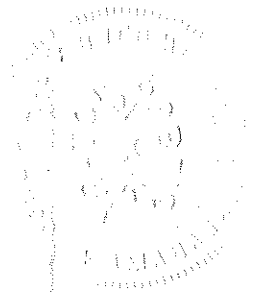
Loxley, Ala

FILED

Sheriff claims 10 miles at

Ten Cents per mile Total \$ 1.00


TAYLOR WILKINS, Sheriff  
 BY ALICE B. DUCK  
 DEPUTY SHERIFF



The Defendant Thompson-Hayward Chemical Company, a corporation, is a foreign corporation, service upon which may be had under the provisions of Title 7, Section 199 (1) of the Code of Alabama of 1940, and there is filed simultaneously with the filing of this complaint an affidavit as required by said statute.

CHASON & STONE

By:

  
Attorneys for Plaintiffs

FILED

APR 19 1961

ALICE L. DUCK, CLERK  
ALICE L. DUCK, REGISTER

NOV 19 1964

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1964-65

1 Div. 104

Thompson-Hayward Chemical Co., a  
Corp., and Angelo Bertolla, et al.,  
Ind. and d/b/a A. Bertolla & Sons

v.

Paul Childress, Jr. and Joy Childress

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

Defendants appeal from judgment for plaintiffs in action for breach of duty to warn plaintiffs of the dangerous character of a substance allegedly manufactured by one defendant and sold to plaintiffs by the other defendant. We discuss this allegation below in detail.

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and overruled the plea in abatement. Thompson-Hayward assigns these rulings as error.

The only evidence taken on the hearing of motion and plea is the testimony of the district manager of Thompson-Hayward, who testified that: he had been district manager of Thompson-Hayward, New Orleans, since 1936; he had under his control and supervision customers since 1936; he definitely has personal knowledge of the operations of Thompson-Hayward insofar as they relate to sales in Alabama and that is under his jurisdiction; Thompson-Hayward has not, since April of 1960, owned any real property in Alabama, owned nothing in Alabama, has no warehouse under lease and stored property, has had none since April of 1960, has no employee living in Alabama, has had none since 1960; Thompson-Hayward has never had any employees living in Alabama since 1926 and never owned any property of any type in Alabama; Thompson-Hayward is a corporation, was chartered in Missouri until June 1, 1962 or 1961, when it merged with a Delaware corporation; since April, 1960, Thompson-Hayward has not been chartered in Alabama; Thompson-Hayward has had only one salesman at any time that traveled through this area, making his headquarters in New Orleans; the salesman, Asinworth, who traveled here in April of 1960 left the company later in the year and has been replaced with another salesman; both men lived in New Orleans, Louisiana; the salesman travels in Alabama approximately one week out of the month; his schedule is under the control of the witness; Thompson-Hayward had

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Stated generally, plaintiffs allege that one defendant manufactured and placed on the market a dangerous substance, i. e., a vine killer; that the other defendant sold the substance to plaintiffs; that defendants knew of the dangerous quality of the substance but failed to warn plaintiffs; that plaintiffs used the substance by spraying it on their potato crop to kill the vines; that some of the substance drifted out of the potato field onto grass in plaintiffs' adjacent pasture; and that plaintiffs' cattle ate the grass, were thereby poisoned, and died.

Plaintiffs operate a farm in Baldwin County, Alabama. The manufacturing defendant is Thompson-Hayward Chemical Company, a foreign corporation not qualified to do business in Alabama. The vendor defendants, who sold the vine killer to plaintiffs, are a partnership, A. Bertolla & Sons, and the individual partners. They will sometimes be referred to collectively as Bertolla. Thompson-Hayward and Bertolla have taken separate appeals.

Service was made on Thompson-Hayward as provided by Act No. 282, Acts of Alabama, Regular Session, page 347, approved August 5, 1953. See Code of 1940, Recompiled 1958, Title 7, § 199(1).

Appearing specially, Thompson-Hayward asserted, by motion to quash service and plea in abatement, that it was not doing business in Alabama and, therefore, was not subject to the jurisdiction of the Circuit Court of Baldwin County. After hearing, the court denied the motion to quash

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some pesticides or herbicides registered with the Department of Agriculture and Industries in Alabama in 1960 but witness does not recall how many; the salesman called on Bartolla in 1960; the salesman calling on customers would spend at least one week out of each month in this particular area; on occasion, Thompson-Hayward ships C.O.D.; its customers may resell at any price fixed by the customer; there is a suggested price on most things; Thompson-Hayward would not sell directly to a farmer but would tell him "that we had people handling our materials, or buying materials from us that would no doubt have some stocked that they would be glad to sell; we would not ship directly"; all products are shipped under labels which give specific instructions for use of the product; a salesman, on inquiry, "would recommend one product to another to a customer to use on a crop"; the salesman would give the man one of the labels; the witness sent salesmen to Alabama and encouraged them to call on customers and promote the sale of company products; the witness came to Alabama possibly in May, 1960; he was present when pictures were taken of the container; he came to Alabama to investigate the unfortunate occurrence in Baldwin County; he came as representative of Thompson-Hayward; Thompson-Hayward has no agency in Alabama.

This action was commenced April 19, 1961. The occurrences which form the basis of the action took place in May, 1960, and thereafter.

In summary, the evidence taken on hearing of the motion and plea tends to show that: Thompson-Hayward had been

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making sales in Alabama since 1931; had 25 to 30 customers in Alabama, 4 of whom were in Baldwin County; that defendant employed one salesman who spent approximately one week of each month in Alabama; that he was a soliciting agent without authority to bind the company. We think the evidence warrants the inference that there was a continuous flow of defendant's products into this state. We are called to decide whether such activity is sufficient to constitute doing business in this state so as to give the courts of this state jurisdiction in this case.

Whether a non-resident corporation was doing business in a state, so as to subject the corporation to the jurisdiction of that state and its courts, has been the issue in many decided cases. One of the later cases decided by this court is Boyd v. Warren Paint & Color Company, 234 Ala. 687, 49 So. 2d 559, where this court said:

"It is, of course, recognized that a state may not make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations, that is, where the defendant is not present in the state. But since a corporation must act vicariously and its presence in the state can only be manifested by the acts of its authorized agents, the question is to be determined by the activities of those



agents and the character of business done.

And each case must depend on its own facts.

International Shoe Co. v. State of Washington,

326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95,

161 A.L.R. 1057; International Harvester

Co. v. Commonwealth of Kentucky, 234 U.S.

579, 34 S.Ct. 944, 58 L.Ed. 1479.

" . . . . .

"But the traditional theory, thought to be crystalized in federal jurisprudence, that personal jurisdiction over a foreign corporation cannot be acquired when the only basis is 'mere solicitation' of business within the borders of the forum's sovereignty, (Citations Omitted.), seems to be no longer controlling. Recent federal decisions have considerably impinged upon that concept. (Citations Omitted.)

"The rule that we deduce from these late decisions, of which International Shoe Co. v. State of Washington is the 'bellwether,' is that the regular and systematic solicitation of orders in the state by appellant's salesmen, resulting in a continuous flow of appellant's products into the state, is sufficient to constitute doing business in the

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state so as to make the corporate defendant amenable to suits in its courts, provided there be included in the inquiry the factor of estimating the inconvenience which would result to the corporation from a trial away from its home. (Citation Omitted.)" [254 Ala. at pages 689, 690]

Many authorities are cited in the Boyd case. To repeat the discussions in them would serve no useful purpose and would unduly lengthen this opinion.

The testimony shows that, for more than a year before this action was begun, Thompson-Hayward's salesman traveled in Alabama one week of each month soliciting orders, and that Thompson-Hayward made sales in Alabama as a result of orders obtained by the salesman. We are of opinion that the testimony shows the regular and systematic solicitation of orders in this state, and in Baldwin County, resulting in a continuous flow of Thompson-Hayward's products into Alabama sufficient to constitute doing business here so as to make that defendant subject to suit in the courts of this state in an action for a tort committed in this state.

It follows that the court did not err in denying the motion to quash or in overruling the plea in abatement.

Thompson-Hayward assigns as error the refusal of its requested affirmative charge, and argues that refusal was error because plaintiffs failed to prove that Thompson-Hayward

manufactured and sold the vine killer which allegedly caused the death of plaintiffs' cattle. Thompson-Hayward and Bertolla were each represented by separate counsel in the trial court and on the appeal.

On the trial, when plaintiffs rested, Thompson-Hayward moved to exclude plaintiffs' evidence on the ground that plaintiffs' evidence failed to make out a prima facie case. The court denied the motion, whereupon Thompson-Hayward rested and requested the affirmative charge which the court refused.

We have read all the testimony and have considered plaintiffs' argument that the activities of Thompson-Hayward after the cattle died furnished at least a scintilla of evidence to prove that Thompson-Hayward manufactured and sold the vine killer which plaintiffs used. As we read the evidence, it had not been shown, when plaintiffs rested, that Thompson-Hayward manufactured and sold to Bertolla the very substance which plaintiffs had purchased from Bertolla and sprayed on the potatoes. Plaintiffs' claim against Thompson-Hayward rests on proof of the fact that this defendant had manufactured and placed on the market the particular dangerous substance which plaintiffs sprayed on the potatoes and which caused the death of the cattle. Thompson-Hayward is not shown to be liable unless it be shown that Thompson-Hayward manufactured and placed on the market the very substance complained of. We are, therefore, of opinion that Thompson-Hayward was entitled to the affirmative charge at this time and that the court erred in refusing it.

The trial, however, did not end at this point. The defendant, Bertolla, called witnesses and we think their testimony sufficient to provide at least a scintilla of proof that Thompson-Hayward sold the particular drum of wine killer to Bertolla, who later sold it to plaintiffs. Plaintiffs did not offer any more evidence and neither did Thompson-Hayward.

Plaintiffs insist that the attorneys for Thompson-Hayward remained in the courtroom, took part in the trial by assisting counsel for Bertolla, and thereby waived any rights acquired by the failure of proof against Thompson-Hayward.

Plaintiffs appear to agree that the evidence presented by Bertolla is not available against Thompson-Hayward unless, by further participation in the trial, counsel for Thompson-Hayward made the evidence available. Plaintiffs say in brief:

" . . . It does seem to us however, that if this Court is going to follow the decision in the Howard Hall Company Case (and we think that it is a correct statement of the law) that there is going to have to be some restriction placed upon counsel for a defendant in a like situation who adopts this particular approach to the defense of a particular piece of litigation. Certainly a defendant should

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not be compelled to come forward with testimony, nor should he be compelled to be bound by any additional testimony, where, at the time of the conclusion of the testimony of his adversary, no case has been established against him; but where that defendant continues to actively participate in the trial of the case by assisting counsel for another co-defendant by commenting to the trial court on matters of evidence by requesting further special instructions or by arguing anything to the jury other than their belief of the testimony, then we submit that such a defendant might well be held to have withdrawn his abandonment of the defense of the case or waived any rights which he may have previously acquired by the failure of proof against him. . . ."

In Anderson v. Howard Hall Company, 272 Ala. 466, 131 So. 2d 417, the action was against two defendants, one a corporation and the other an individual. At the conclusion of plaintiff's testimony, the court announced that it would give the affirmative charge for the corporate defendant, whereupon witnesses and counsel for the corporation left the courtroom and the case proceeded against the other defendant. The sole question on the appeal was whether plaintiff was entitled to go to the jury against the corporation. This court held that

the trial court did not err in giving the affirmative charge for the corporation. In the opinion this court said: ". . . Howard Hall (the corporate defendant) rested its case at the close of plaintiff's testimony. It does not seem to us, therefore, that the testimony of Mr. Haynes (the individual defendant) given as a part of his own case, after objection was made, has any bearing on this appeal." (Par. Supplied.)

There is this difference between the Anderson case and the instant case; there the affirmative charge was given, here it was refused; there defendant's counsel left the courtroom, here defendants' counsel remained in court. In Anderson, this court refused to consider the testimony taken after the corporate defendant rested. In the case at bar, plaintiffs contend that we ought to consider, against the corporate defendant, the testimony presented by the other defendant after the corporation rested; because, as we understand the argument, of subsequent acts by counsel for the corporate defendant.

The record discloses that after Thompson-Hayward rested, its counsel remained in court. Counsel for Bertolla offered in evidence a label which was attached to the pleas of Thompson-Hayward. Plaintiffs' counsel objected. The court said "You can't introduce it with the pleas on there; you will have to remove that," whereupon counsel for Thompson-Hayward said: "As far as I know, the pleas are still good."

Later, plaintiffs' counsel objected to Bertolla's counsel asking questions as to the label in his hand which

is a part of Thompson-Hayward's plea. Bertolla's counsel said: "This is a part of the plea," and Thompson-Hayward's counsel said: "Pull it off the plea."

Still later, during direct examination of the defendant, Mr. Alex Bertolla, counsel for plaintiffs said he would like the record to show that counsel for Thompson-Hayward is still participating in the trial of this case. Counsel for Thompson-Hayward said that was not a correct statement. The court said: "You gentlemen are participating by wiggling your head." The record indicates there was a conversation between counsel for Bertolla and counsel for Thompson-Hayward. The court said it did not know what the conversation was, ". . . . but you are getting yourself in a hole." Counsel for Bertolla offered in evidence a part of Thompson-Hayward's pleading. The court said: "Yes, you are introducing the pleading of these gentlemen with their permission." Counsel for Thompson-Hayward said: "We don't take any action or any part, or consent or object to anything any of the counsel do." The court said: "I would expect that, but at the same time you gentlemen are sitting there and permitting yourselves to be involved - I am telling you now." Counsel for Thompson-Hayward said: "Would your Honor prefer that we move?" and the court said: "No sir, you can get over there next to the jury if you like -- if they want to do that, okay." Counsel for plaintiffs asked that the record show that, after Thompson-Hayward rested, counsel for Thompson-Hayward continued to sit at the counsel table

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and consult with counsel for Bertolla. The court said let the record show that.

We think it apparent that counsel for Thompson-Hayward could not, with propriety, leave the courtroom after the court had refused their request for affirmative charge. It does not appear that the counsel examined any witness or objected to questions propounded to witnesses. The counsel stated that they did not consent or object to anything other counsel do.

Thompson-Hayward was still a defendant in the case. We think its counsel had a right to request charges and to argue to the jury. As to the limit of the action such counsel might take after resting their case without being bound by testimony offered by the other defendant, we will not undertake to set a boundary, but so far as this record shows, we do not think that the action of counsel for Thompson-Hayward amounted to reopening the case and making the testimony offered by Bertolla available to make out a case against Thompson-Hayward.

Of the errors argued by Bertolla we will consider one. The others are either without merit or probably will not occur on another trial.

Bertolla argues that the court erred in overruling the grounds of demurrer to the complaint which take the point that it does not sufficiently appear that Bertolla owed any duty to plaintiffs which Bertolla negligently failed to perform. The argument is that the allegations fail to show such a duty because "there is no allegation nor suggestion



that the Defendants Bertollas, sold the Plaintiff the inherently dangerous substance complained of and the Complaint wholly fails to show that the Plaintiff purchased the inherently dangerous substance from Bertollas, . . . ."

Plaintiffs say: "The complaint does allege that Appellant Bertolla sold the product and that the Appellees purchased the product. It does not allege that Appellees purchased the product from Appellant Bertolla but it charges that Appellant with negligence in failing to warn of the nature of the product and most assuredly, if Appellees had not proven a purchase from Appellant Bertolla then the trial court should have directed a verdict against the Appellees." (Emphasis Supplied.)

Plaintiffs say further that if the court erred in overruling those grounds of demurrer, it was error without injury because the error was cured when the omitted fact was supplied by the testimony, citing Life & Casualty Ins. Co. v. Peacock, 220 Ala. 104, 124 So. 229.

Bertolla argues that because the complaint fails to state a cause of action, the error was not cured by the evidence; that it is the settled law of this state that a judgment for the plaintiff will be reversed where the facts appear on the face of the complaint and show that no substantial cause of action was disclosed, though the complaint was not demurred to. American Tie & Timber Co. v. Naylor Lumber Co., 190 Ala. 319, 324, 67 So. 246.

This court has said that, in negligence cases, the complaint must allege facts from which a duty of care arises

on the part of the defendant; the relationship of the parties must be stated in order to establish a duty; and, without the element of duty, a cause of action is not stated. Stanton v. Marsh, 274 Ala. 501, 503, 150 So. 2d 363.

Though there be a defect of averment in stating the cause of action in the complaint, if both parties introduce such relevant evidence as they desire and the court correctly charges the law on the subject, the ruling of the court in improperly overruling demurrer to the complaint will not require reversal for that it was without injury. But there are circumstances when the rule will not apply. It will not apply, as an instance, when the complaint does not state a cause of action without the matter which was omitted. City of Mobile v. McClure, 221 Ala. 51, 53, 127 So. 832.

We must inquire whether the complaint states a cause of action. Plaintiffs' cause of action rests on the rule, or exception, that one who sells or delivers an article, which he knows to be imminently dangerous to life or limb, to another, without giving notice of its qualities, is liable to any person who suffers an injury therefrom which might have been reasonably anticipated, whether there were any contractual relations between the parties or not. Sterchi Bros. Stores v. Castleberry, 236 Ala. 349, 352, 182 So. 474.

The breach of duty charged against defendants is the failure to give notice to or warn plaintiffs of the dangerous nature of the vine killer. Do the facts alleged in the complaint show that the defendant, Bertolla, owed a duty to warn

plaintiffs? As plaintiffs candidly admit in brief, it is not alleged that plaintiffs purchased the vine killer from Bertolla. It is not alleged that Bertolla ever had possession of or any connection whatsoever with the particular substance which plaintiffs sprayed and which allegedly caused the death of plaintiffs' cattle. The rule, upon which plaintiffs' right to recover is based, imposes the duty on one who, with knowledge of its dangerous quality, manufactures or sells an imminently dangerous article and fails to warn. It is not alleged that Bertolla manufactured the dangerous article. It is not alleged that Bertolla sold it. Now, then, did Bertolla owe a duty to warn?

We are of opinion that it must follow that the complaint fails to show that Bertolla owed a duty to warn plaintiffs, and, therefore, fails to state a cause of action.

Although it is not assigned for error or argued, it seems appropriate, in view of another trial, to observe that the plaintiffs do not appear to allege in direct and positive terms that Thompson-Hayward manufactured and put on the market the particular substance which plaintiffs purchased and sprayed on their potatoes.

For error in refusing the affirmative charge for Thompson-Hayward and because the complaint does not state a cause of action against Bertolla, the judgment is reversed and the cause is remanded.

REVERSED AND REMANDED.

Livingston, C. J., and Lawson and Goodwyn, JJ., con-

cur.

STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 104

Thompson-Hayward Chemical Co., a Corp., and Angelo Bertolla, et al., Ind. and d/b/a A. Bertolla & Sons, Appellant,  
v.

Paul Childress, Jr., and Joy Childress, Appellee,

From Baldwin Circuit Court.

The State of Alabama.  
City and County of Montgomery. }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to seventeen inclusive, contain a full, true, and correct copy of the opinion of

said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme

Court of Alabama, this the 19th day of

November 19 64

J. Render Thomas

Clerk of the Supreme Court of Alabama

No. 4686Baldwin County, Circuit Court.PAUL CHILDRESS, JR. & JOY CHILDRESS

Plaintiff.

vs.

THOMPSON -HAYWARD CHEMICAL CO., A CORP., ET AL

Defendant.

I, Alice J. Duck Clerk of Circuit Court,  
of Baldwin County, Alabama, hereby certify that in the  
cause of Paul Childress, Jr. & Joy Childress plaintiffs,  
vs.

Thompson Hayward Chemical Co., a Corp. et al defendant\_s,  
which was tried and determined in this Court on the 12th day of  
Sept. 19 62, in which there was a judgment for Three Thousand and  
no/100 - - - Dollars, in favor of the plaintiff, (or judgment  
for defendant,) the Defendants on the 21st day of  
Sept. 19 62, took an appeal to the Supreme Court  
of Alabama to be holden of and for said State.

I further certify that the Defendants  
filed security for cost of appeal, to the Supreme Court, on  
the 21st day of Sept. 19 62, and that Angelo Bertolla, Alex S. Bertolla,  
R.F. Bertolla, J.P. Bertolla, F.C. Griffin and J.C. Grimes,  
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_, served on Chason & Stone  
as attorney of record for said appellee, and that the amount sued for  
was Five Thousand Five Hundred and no/100 - - - Dollars. (Or certain lands)  
(Or personal property.)

Witness my hand and the seal of this Court, this the 21st  
day of September 1962.

Alice J. Duck  
Clerk of the Circuit Court of

Baldwin County, Alabama.

THE SUPREME COURT OF ALABAMA

1st Div., No. 104

Thompson-Hayward Chemical Co.,

a Corporation, and Angelo  
Bertolla, et al., Ind. Appellant,  
& d/b/a A. Bertolla & Sons.  
v.

Paul Childress, Jr. and Joy

Childress

Appellee.

From Baldwin Circuit Court.

Certified Copy of

Opinion

Div. No.

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 4686

Baldwin County, Circuit Court.

PAUL CHILDRESS, JR. & JOY CHILDRESS  
Plaintiff.  
vs.

THOMPSON-HAYWARD CHEMICAL CO., A CORP., ET AL  
Defendant.

I, Alice J. Duck Clerk of Circuit Court,  
of Baldwin County, Alabama, hereby certify that in the  
cause of Paul Childress, Jr. & Joy Childress plaintiff,  
vs.

Thompson-Hayward Chemical Company, a Corp., et al defendant,  
which was tried and determined in this Court on the 12th day of  
Sept. 19 62, in which there was a judgment for  
Three Thousand and no/100 - Dollars, in favor of the plaintiff, (or judgment  
for defendant,) the Defendant, Thompson-Hayward Chemical Co.,  
on the 25th day of  
September 19 62, took an appeal to the Supreme Court  
of Alabama to be holden of and for said State.

I further certify that Thompson-Hayward Chemical Company, a Corp.  
filed security for cost of appeal, to the Supreme Court, on  
the 25th day of Sept. 1962, and that Thompson-Hayward Chemical Co.,  
a Corp., by W.C. Boone, As its attorney and Hartford Accident & Indemnity Co.,  
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the  
day of 19, served on Chason & Stone  
as attorney of record for said appellee, and that the amount sued for  
was Five Thousand Five Hundred and no/100 - - - - Dollars. (Or certain lands)  
(Or personal property.)

Witness my hand and the seal of this Court, this the 25th  
day of September 19 62.

Alice J. Duck  
Clerk of the Circuit Court of

Baldwin County, Alabama.

PAUL CHILDRESS, JR. and ) IN THE CIRCUIT COURT OF  
JOY CHILDRESS, )  
Plaintiffs ) BALDWIN COUNTY, ALABAMA  
vs. )  
THOMPSON-HAYWARD CHEMICAL ) AT LAW  
COMPANY, a corporation, )  
ET AL, )  
Defendants. ) CASE NO. 4686  
)

SUMMONS TO PARTIES NOT JOINING IN APPEAL

TO: Any Sheriff of the State of Alabama

A judgment having been rendered against Thompson-Hayward Chemical Company, a corporation, in the above styled cause in the Circuit Court of Baldwin County, Alabama on the 12th day of September, 1962, and from such judgment the said Thompson-Hayward Chemical Company, a corporation, has obtained an appeal to the Supreme Court of the State of Alabama;

You are hereby commanded to summon Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla, individually and doing business as A. Bertolla and Sons, who have not joined in the appeal, to appear at the next term of the Supreme Court of Alabama to defend said appeal, if they desire.

WITNESS my hand and seal this 15 day of September, 1962.

Alice L. Duck  
Alice Duck, Clerk, Circuit Court,  
Baldwin County, Alabama



PAUL CHILDRESS, JR. and	)	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	)	
	)	
Plaintiffs	)	BALDWIN COUNTY, ALABAMA
	)	
vs.	)	
	)	AT LAW
THOMPSON-HAYWARD CHEMICAL	)	
COMPANY, a corporation,	)	
ET AL,	)	
	)	
Defendants.	)	CASE NO. 4686
	)	

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You are hereby commanded to summon Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla, individually and doing business as A. Bertolla and Sons, who have not joined in the appeal, to appear at the next term of the Supreme Court of Alabama to defend said appeal, if they desire.

WITNESS my hand and seal this \_\_\_\_ day of September, 1962.

Alice Duck, Clerk, Circuit Court,  
Baldwin County, Alabama

PAUL CHILDRESS, JR. and	)	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	)	
	)	
Plaintiffs	)	BALDWIN COUNTY, ALABAMA
	)	
vs.	)	
	)	AT LAW
THOMPSON-HAYWARD CHEMICAL	)	
COMPANY, a corporation,	)	
ET AL,	)	
	)	
Defendants.	)	CASE NO. 4686
	)	

SUMMONS TO PARTIES NOT JOINING IN APPEAL

TO: Any Sheriff of the State of Alabama

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You are hereby commanded to summon Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla, individually and doing business as A. Bertolla and Sons, who have not joined in the appeal, to appear at the next term of the Supreme Court of Alabama to defend said appeal, if they desire.

WITNESS my hand and seal this \_\_\_\_ day of September, 1962.

Alice Duck, Clerk, Circuit Court,  
Baldwin County, Alabama

PAUL CHILDRESS, JR. and	)	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	)	
	)	
Plaintiffs	)	BALDWIN COUNTY, ALABAMA
	)	
vs.	)	AT LAW
	)	
THOMPSON-HAYWARD CHEMICAL	)	
COMPANY, a corporation,	)	
ET AL,	)	
	)	
Defendants.	)	CASE NO. 4686
	)	

SUMMONS TO PARTIES NOT JOINING IN APPEAL

TO: Any Sheriff of the State of Alabama

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You are hereby commanded to summon Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla, individually and doing business as A. Bertolla and Sons, who have not joined in the appeal, to appear at the next term of the Supreme Court of Alabama to defend said appeal, if they desire.

WITNESS my hand and seal this \_\_\_\_ day of September, 1962.

Alice Duck, Clerk, Circuit Court,  
Baldwin County, Alabama

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

SIXTH FLOOR FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

CHAS. C. HAND  
C. B. ARENDALL, JR.  
T. MASSEY BEDSOLE  
THOMAS G. GREAVES, JR.  
WM. BREVARD HAND  
VIVIAN G. JOHNSTON, JR.  
PAUL W. BROCK  
ALEX F. LANKFORD, III  
EDMUND R. CANNON, JR.  
LYMAN F. HOLLAND, JR.  
J. THOMAS HINES, JR.  
W. C. BOONE, JR.  
DONALD F. PIERCE

MAILING ADDRESS:  
P. O. BOX 123

CABLE ADDRESS:  
HAB

TELEPHONE:  
HEMLOCK 2-5514

February 20, 1962

Mrs. Alice Duck, Clerk  
Circuit Court of Baldwin County  
Court House  
Bay Minette, Alabama

Re: Childress v. Thompson-Hayward  
Chemical Company, et al

Dear Mrs. Duck:

I enclose herewith a copy of the demurrer and motion to strike to be filed on behalf of defendant Thompson-Hayward Chemical Company in the above case. I have sent copies of these to the other attorneys involved, Norborne Stone and Harry Wilters.

Yours very truly,

*W. C. Boone Jr.*

For the Firm

WCBjr.mbd

Enclosures

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

SUITE 622 FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

CHAS. C. HAND  
C. B. ARENDALL, JR.  
T. MASSEY BEDSOLE  
THOMAS G. GREAVES, JR.  
WM. BREVARD HAND  
VIVIAN G. JOHNSTON, JR.  
PAUL W. BROCK  
ALEX F. LANKFORD, III  
EDMUND R. CANNON, JR.  
LYMAN F. HOLLAND, JR.  
J. THOMAS HINES, JR.  
W. C. BOONE, JR.  
DONALD F. PIERCE

May 18, 1961

MAILING ADDRESS:  
P. O. BOX 123

CABLE ADDRESS:  
HAB

TELEPHONE:  
HEMLOCK 2-5514

Mrs. Alice Duck, Clerk  
Circuit Court of  
Baldwin County, Alabama  
Bay Minette, Alabama

Re: Paul Childress, Jr. and Joy Childress  
vs. Thompson-Hayward Chemical Company,  
a corporation, and Angelo Bertolla,  
Alex Bertolla, R. F. Bertolla and J.F.  
Bertolla, individually and doing busi-  
ness as A. Bertolla and Sons, In The  
Circuit Court of Baldwin County, Alabama

Dear Mrs. Duck:

We enclose herewith a motion to quash service on  
behalf of the defendant Thompson-Hayward Chemical  
Company which we would appreciate your placing of  
record.

If you would be kind enough to acknowledge re-  
ceipt of these pleadings on the enclosed copy of this  
letter and return same to me in the enclosed self-  
addressed envelope, I would appreciate it.

Yours very truly,

*W. C. Boone Jr.*

For the Firm

WCBjr.meb

7686  
Paul Childress  
vs  
Thomas Hayman  
Chemical Co.

JURY LIST - FALL SESSION - SEPT. 10, 1962

1. Barton, John, Sr., Merchant, Bay Minette
2. Beasley, Newton P., Mechanic, Bay Minette
3. Roley, Willie, Carpenter, Bay Minette
4. Keuler, Jake W., Farmer, Loxley
5. Knowles, Kenneth, Brookley Field, Bay Minette
6. Klein, John P., Farmer, Elberta
7. Knowles, J. Frank, Clerk, Bay Minette
8. Stimpson, Carl, Clay Products, Fairhope
9. Steele, Ira, Mail Clerk, Fairhope
10. Sturges, Frank III, Alcoa, Spanish Fort
11. Tindal, Kendrick N, Contractor, Bay Minette
12. Tindall, Horace A., Farmer, Gulf Shores
13. Trawick, Cecil, Farmer, Stapleton
14. Singleton, Art, Public, Rosinton
15. Nelson, Martin, Cleaners, Fairhope
16. Pacey, Paul G., Farmer, Fairhope
17. Morse, Wilson W., Civil Service, Foley
18. McKibbin, W.G., Woodhaven Dairy, Fairhope
19. Bishop, George O., Merchant, Fairhope
20. Booth, Robert E., Laborer, Fairhope
21. Byrd, Claude, Newport, Bay Minette
22. Cabiness, Marvin, Laborer, Bay Minette
23. Carlisle, D.C., Newport, Bay Minette
24. Chandler, Sidney, Bank Clerk, Silverhill
25. Cooper, Claude, Farmer, Rosinton
26. Cooper, Nolan P., Merchant, Rosinton
27. Creamer, Henry, City Employee, Fairhope
28. Deloach, Percy, Farmer, Bay Minette
29. Good, John, Jr., Farmer, Elberta
30. Hammond, Walter W., Grocery, Robertsedale
31. Hastie, Joe H., Merchant, Stockton
32. Hill, Calvin, Farmer, Belforest
33. Jackson, Thomas K., Farmer, Daphne
34. Johnson, Coy L., Laborer, Bay Minette
35. Jones, Clopton, Real Estate, Robertsedale
36. Kasuba, Stanley J., Insurance, Fairhope
37. Frank, George, Farmer, Elberta
38. Garner, Clifton, Carpenter, Bay Minette
39. Lunsford, Albert A., Teacher, Foley
40. McClain, Cecil E., Elec Co., Robertsedale
41. York, D.W., Farmer, Foley
42. Tunstall, Solomon, Laborer, Stockton
43. Mund, Theo C., Fisherman, Gulf Shores
44. McDill, Sam C., Farmer, Bay Minette
45. Malone, Lawrence L., Automobile Dealer, Bay Minette
46. Beasley, Wilson C., Store Owner, Bay Minette
47. Noonan, Edward D., Jr., Newport, Bay Minette
48. Stuart, Harold, Cleaners, Bay Minette
49. Langham, Tommy M., Merchant, Bay Minette
50. Foster, Walter H., Ford Dealer, Bay Minette
51. Friel, William E., Agriculture, Bay Minette
52. Moorer, Uhle S., Laborer, Bay Minette
53. Duck, Horace Harold, Laborer, Bay Minette
54. Powell, Shirley, Post Office, Bay Minette
55. Hodges, Willie Lee, Sawmill, Bay Minette

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4686

Raul Childress

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Raymond Cham. O

SUPERSEDEAS BOND

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS That we, Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, as principals, and FC. Griffin and J.C. Grimes as surety are held and firmly bound unto Paul Childress, Jr. and Joy Childress in the sum of Six Thousand One Hundred Thirty-Six and 90/100 Dollars (\$6,136.90) for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly, severally and firmly by these presents, and as part of this undertaking we hereby waive all our rights under the Constitution and Laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

Sealed with our seals, and dated this 21 day of September, 1962.

Whereas, at the Fall Term, 1962, of the Circuit Court of Baldwin County, of and for said County, on, to-wit, the 12 day of September, 1962, the said Paul Childress, Jr. and Joy Childress recovered a judgment in said Court against Thompson-Hayward Chemical Company, a corporation, and Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, for the sum of \$3,000.00 debt and damages, and the further sum of \$68.45, the cost in that behalf expended; and whereas, on this date, the said Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, as such defendants, have made application for an appeal from said judgment to the next term of the Supreme Court, to be holden of and for said State, to reverse said judgment, and also for a supersedeas of the execution of said judgment, which has been granted on entering into this bond.



Now, therefore, the condition of the foregoing obligation is such, that if the said Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla and J. F. Bertolla individually and d/b/a A. Bertolla & Sons, shall prosecute their said appeal to effect, and satisfy such judgment as the Supreme Court may render in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

Angelo Bertolla +(SEAL)  
Angelo Bertolla

Alex S. Bertolla +(SEAL)  
Alex S. Bertolla

R. F. Bertolla +(SEAL)  
R. F. Bertolla

J. F. Bertolla +(SEAL)  
J. F. Bertolla

Alex S. Bertolla +(SEAL)  
Alex S. Bertolla d/b/a  
A. Bertolla & Sons

F. Bertolla +(SEAL)  
G. L. Trimmer +(SEAL)

Approved:

9-21-62

Alvin J. Leuck  
Clerk

THE STATE OF ALABAMA  
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the \_\_\_\_\_  
12th day of Sept., 1962 ~~Monday~~, ~~1962~~, in a cer-  
tain cause in said Court wherein Paul Childress, Jr. and Joy Childress  
Plaintiff, and Thompson-Hayward Chemical Co., a Corp. et al  
Defendant, a judgement was rendered against said  
Defendants  
to reverse which ~~xxxx~~ Judgment, the said Defendants  
applied for and obtained from this office an APPEAL, returnable to the next  
Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on  
the \_\_\_\_\_ day of \_\_\_\_\_, 196 next, and the necessary bond  
having been given by the said ~~xxxx~~ Angelo Bertolla, Alex S. Bertolla, R.F. Bertolla,  
with J.P. Bertolla, F.C. Griffin and J.C. Grimes, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Thompson-Hayward Chemical  
Co. or Paul W. Brock  
\_\_\_\_\_, attorney, to appear at the next Term of our  
said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 5th  
day of Oct., A. D., 1962.

Attest:

Alice J. Duck, Clerk.

Received 1 Day of October 1962  
and on 1st Day of November 1962  
I served a Copy of the within Citation  
on Mr. Paul Brock  
by service of Mr. Paul Brock  
RAY D. BRIDGES, Sheriff  
Baldwin County, Alabama

3385

NO. 4686

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CIRCUIT COURT  
Baldwin County, Alabama

---

PAUL CHILDRESS, JR. & JOY CHILDRESS

Vs. { Citation in Appeal

THOMPSON -HAYWARD CHEMICAL CO.  
A CORP., ET AL

RECEIVED  
OCT 8 1962  
SHERIFF'S OFFICE

---

Issued 5th day of Oct., 1962

---

Serve Paul Brock  
By Hand, Arendall, Bedsole,  
Greaves & Johnston  
at Mobile

10/5/62

THE STATE OF ALABAMA  
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the \_\_\_\_\_

12th day of September, 1962 ~~Monday~~, ~~1962~~, in a cer-

tain cause in said Court wherein Paul Childress, Jr. and Joyk Childress

Plaintiffs and Thompson-Hayward Chemical Co., a Corp.,

et al

Defendant, a judgement was rendered against said

Defendants

to reverse which Judgment, the said Defendants

applied for and obtained from this office an APPEAL, returnable to the next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on

the \_\_\_\_\_ day of \_\_\_\_\_, 196 next, and the necessary bond

having been given by the said Angelo Bertolla, Alex S. Bertolla, R.F. Bertolla, J.P. Bertolla

~~with~~ F.C. Griffin and J.C. Grimes, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Paul Childress, Jr.

and Joy Childress or Chason & Stone

\_\_\_\_\_, attorney, to appear at the next Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 21st

day of September, A. D., 196 2

Attest:

Alice J. Duck, Clerk.

No. 4686

**CIRCUIT COURT**  
**Baldwin County, Alabama**

**PAUL CHILDRES, JR. & JOY CHILDRESS**

**Vs. { Citation in Appeal**

**THOMPSON-HAYWARD CHEMICAL CO.**

**A Corp., et al**

**Issued 21st day of Sept., 1962,**

**serve: Chason & Stone**

Received 21 day of Sept 1962  
and on 24 day of Sept 1962  
I served a copy of the within Citation  
on Chason & Stone

By service on Mr Chason

TAYLOR WILKINS, Sheriff  
By W.A. Talbut D.S.  
o-m

*I hereby accept  
service of the  
notice of appeal*

Paul Chidress

vs

Thompson Hayward

7104686-

EXHIBIT LIST - December 6, 1963

- ~~1. Beasley, Newton P., Mechanic, Bay Minette~~
- ~~2. Beresgnotti, Henry A., Carpenter, Daphne~~
3. Blackman, W.K., Farmer, Foley
- ~~4. Boock, James D., Farmer, Fairhope~~
- ~~5. Campbell, A.B., Farmer, Rosinton~~
- ~~6. Chandler, Sidney, Bank Clerk, Silverhill~~
- ~~7. Cook, Paul, Farmer, Bay Minette~~
- ~~8. Cook, Paul, Laborer, Bay Minette~~
- ~~9. Dvorak, Joseph, Merchant, Silverhill~~
- ~~10. Ellis, Thomas, Farmer, Bay Minette~~
- ~~11. Ellis, John, Farmer, Bay Minette~~
12. Evans, John G., Farmer, Foley
- ~~13. Green, James L., Mechanic, Bay Minette~~
- ~~14. Hale, James H., Merchant, Starleton~~
15. James, Dayton, Mechanic, Foley
- ~~16. Jare, James L., Farmer, Rabon~~
17. Kennedy, Raymond, Fleet, Bay Minette
- ~~18. Kucera, Frank A., Jr., Farmer, Robertsdale~~
19. Little, Fred, State Emp., Bay Minette
20. Manning, Wesley W., Civil Service, Foley
- ~~21. Moore, John, Newport, Bay Minette~~
22. Nelson, Durwood F., Farmer, Fairhope
- ~~23. O'Leary, Tommy, Farmer, Robertsdale~~
24. Underwood, Verne, Farmer, Mag. Spgs.
25. Urbanek, Robert C., Brookley Field, Fairhope
- ~~26. Walker, W. Kirby, Railroad, Bay Minette~~
- ~~27. Adams, George, John Kidd Logging Co., Daphne~~
28. Wilson, Jack H., Merchant, Foley
- ~~29. Vance, Harold, Gov't Emp., Fairhope~~
- ~~30. Struckey, Whit Nelson, Millman, Bay Minette~~
- ~~31. Powell, Shirley, Post Office, Bay Minette~~
32. Coleman, John E., Farmer, Bay Minette
- ~~33. Quinley, Lymen, Farmer, Bay Minette~~
34. Conway, Clyde, Shipyard, Bay Minette
- ~~35. McGinn, John M., Insurance, Bay Minette~~
36. Wilson, Libert H., Bookkeeper, Bay Minette
37. Steele, Clyde Madison, Merchant, Bay Minette
38. Homan, Milford, Truck Driver, Bay Minette

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4686

Chedres

VS

Thompson Hayward

*Pls Ex 1*

PAUL CHILDRESS, JR. and  
JOY CHILDRESS,

Plaintiffs,

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, A Corporation,  
Et Al.

Defendants.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4686

INTERROGATORIES PROPOUNDED BY THE PLAINTIFFS TO THE DEFENDANT THOMPSON-HAYWARD CHEMICAL COMPANY, A CORPORATION

Come now the Plaintiffs, in the above styled cause, by their Attorneys, and propounds the following interrogatories to the Defendant Thompson-Hayward Chemical Company, a corporation:

1. Please state if, during the month of May, 1960, A. Bertolla & Sons, a partnership, were marketers, distributors or dealers in Baldwin County, Alabama, of agricultural chemicals manufactured and marketed by you.
2. Please state if, during the month of May, 1960, that among the products manufactured and sold by you, and sold, marketed or distributed by A. Bertolla & Sons, was a product sold, marketed or distributed under the brand name of "Swan Brand, Sodium Arsenite, Solution #40".
3. Please state if, during the month of May, 1960, and one year prior thereto, you sold any "Swan Brand, Sodium Arsenite, Solution #40" to A. Bertolla & Sons; and, if so, the quantity sold, the date of delivery and the price.
4. Please state, if your answer to the last interrogatory was in the affirmative, if such product was manufactured by you.
5. If you state that it was manufactured by you, please state the amount of arsenite by weight in such product and also the amount of arsenic by weight in such product.

Respectfully submitted,  
CHASON, STONE & CHASON

By:

*Malcolm Stone*  
Attorneys for Plaintiffs

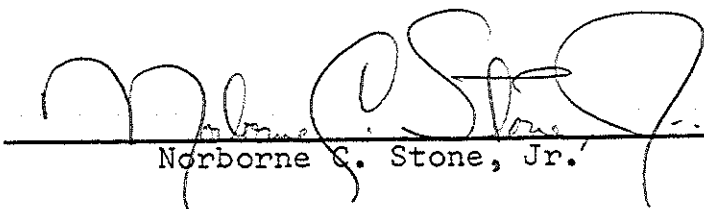


STATE OF ALABAMA

BALDWIN COUNTY


Before me, the undersigned authority, personally appeared Norborne C. Stone, Jr., who is known to me, and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That he is one of the attorneys for the Plaintiffs in the above styled cause and that the answers to the foregoing interrogatories propounded by the Plaintiffs to the Defendant Thompson-Hayward Chemical Company, A Corporation, if well and truly made, will be material evidence for the Plaintiffs.

  
Norborne C. Stone, Jr.

Sworn to and subscribed before me

on this the 22<sup>nd</sup> day of January,  
1965.

  
Notary Public, Baldwin County, Alabama

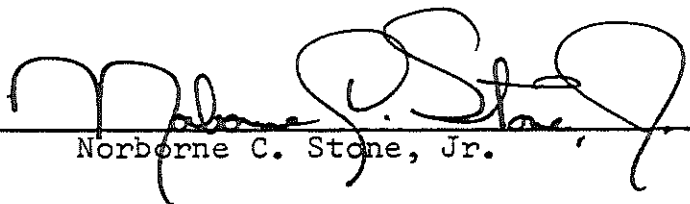
FILED  
JAN 25 1965  
ALICE J. DUCK, CLERK  
REGISTER

STATE OF ALABAMA

BALDWIN COUNTY

I, Norborne C. Stone, Jr., one of the attorneys for the Plaintiffs in the above styled cause, do hereby certify that I have this day served a copy of the foregoing interrogatories and the affidavit in connection therewith on Hon. Paul Brock, one of the attorneys for the Defendant Thompson-Hayward Chemical Company, a corporation, by mailing a copy of the same by United States Mail, postage prepaid and properly addressed to him at his office in the First National Bank of Mobile, Mobile, Alabama.

WITNESS my hand this the 25th day of January, 1965.

  
Norborne C. Stone, Jr.

FILED

JAN 25 1965

ALICE J. DUCK, CLERK  
REGISTER

FILED  
JAN 25 1968  
ALICE L. DUCK, CLERK, REGISTER

Children

W.

Thompson - Key word

4287

6.6.6

*plts up*

PAUL CHILDRESS, JR. and	)	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	)	
	)	BALDWIN COUNTY
Plaintiffs,	)	
	)	ALABAMA
Vs.	)	
	)	AT LAW
THOMPSON-HAYWARD CHEMICAL	)	
COMPANY, A Corporation,	)	
Et Al,	)	CASE NO. 4686
	)	
Defendants.	)	
	)	

ANSWERS TO INTERROGATORIES

Comes now the defendant Thompson-Hayward Chemical Company and, for answer to interrogatories previously propounded to it, says the following:

1. Yes.

2. Our records show that we sold a sodium arsenite solution during May of 1960 to A. Bertolla and Sons, but they do not show whether the product was under the brand name "Swan Brand."

3. Our records show that during May of 1960 and for one year prior thereto we sold a sodium arsenite solution to A. Bertolla and Sons but, again, they do not indicate whether this was under the brand name of "Swan Brand."

Upon advice of counsel, defendant objects to answering the remainder of this interrogatory pertaining to the quantity sold, date of delivery and price upon the following grounds:

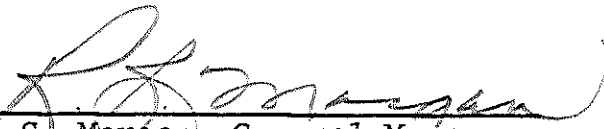
The same is immaterial, irrelevant, constitutes merely a fishing expedition and calls for information which would not be material evidence in this case. Defendant further

objects upon the separate ground that it would be extremely difficult, if not impossible, to find all of the old records from May, 1959 through May, 1960 and to extract from them the information requested.

4. The sodium arsenite solution sold by us to A. Bertolla and Sons was manufactured by Thompson-Hayward Chemical Company.

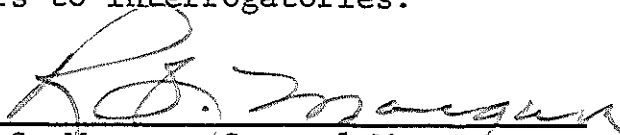
5. Sodium arsenite per gallon weighs 5.25 pounds and arsinious trioxide per gallon weighs four pounds.

THOMPSON-HAYWARD CHEMICAL COMPANY

By:   
R. S. Morgan, General Manager

STATE OF LOUISIANA  
PARISH OF ORLEANS

Before me on this day appeared R. S. Morgan, who is known to me and known to be the General Manager of Thompson-Hayward Chemical Company, and who, upon first being duly sworn, on oath does say that he is the General Manager of Thompson-Hayward Chemical Company and, as such, is authorized to make the foregoing answers to interrogatories.

  
R. S. Morgan, General Manager

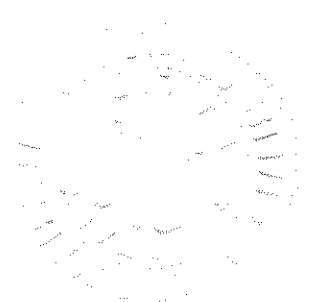
Sworn to and subscribed before me, IN MULTIPLE ORIGINAL  
on this, the 11th day of AUGUST, 1965.

  
Notary Public, ORLEANS Parish, Louisiana

FILED

AUG 20 1965

ANGIE L. DUCK, CLERK  
REGISTER



PAUL CHILDRESS, JR. AND JOY  
CHILDRESS,

Plaintiffs

Vs.

THOMPSON-HAYWARD CHEMICAL COM-  
PANY, a corporation, et al,

Defendants.

X  
X  
X  
X  
X  
X  
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 4686

Comes now the Defendants, Angelo Bertolla, Alex S. Bertolla,  
R. J. Bertolla, J. F. Bertolla individually and d/b/a A. Bertolla  
& Sons, in the above styled cause and gives notice of an appeal  
from the judgment of the Circuit Court rendered on the 12 day of  
September, 1962.

WILTERS & BRANTLEY

BY:

*Robert M Brantley*

Attorney for the Defendants  
Angelo Bertolla, Alex S. Bertolla,  
R. F. Bertolla and J. F. Bertolla  
individually and d/b/a A. Bertolla  
& Sons.

FILED

SEP 20 1962

ALICE J. DUCK, CLERK  
REGISTER

PAUL CHILDRESS, JR. AND JOY	X	
CHILDRESS,	X	
Plaintiffs,	X	IN THE CIRCUIT COURT OF
Vs.	X	BALDWIN COUNTY, ALABAMA
THOMPSON-HAYWARD CHEMICAL COM-	X	AT LAW
PANY, a corporation, et al,	X	CASE NO. 4686
Defendants.	X	

# SECURITY FOR COSTS

We hereby acknowledge ourselves security for cost of appeal to Supreme Court in the above case, returnable to the present term thereof. And for the payment of the above security we hereby waive our right of exemption to personal property under the Constitution and Laws of the State of Alabama.

**FILED**  
 SEP 21 1962  
 ALICE J. DUCK, CLERK  
 REGISTER

<u>Angelo Bertolla</u>	(SEAL)
Alex S. Bertolla	
<u>Alex S. Bertolla</u>	(SEAL)
Alex S. Bertolla	
<u>R. F. Bertolla</u>	(SEAL)
R. F. Bertolla	
<u>J. F. Bertolla</u>	(SEAL)
J. F. Bertolla	

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

MAILING ADDRESS:  
P. O. BOX 123

CABLE ADDRESS:  
HAB

TELEPHONE:  
432-5514  
AREA CODE 205

CHAS. C. HAND  
C. B. ARENDALL, JR.  
T. MASSEY BEDSOLE  
THOMAS G. GREAVES, JR.  
WM. BREVARD HAND  
VIVIAN G. JOHNSTON, JR.  
PAUL W. BROCK  
ALEX F. LANKFORD, III  
EDMUND R. CANNON, JR.  
LYMAN F. HOLLAND, JR.  
J. THOMAS HINES, JR.  
DONALD F. PIERCE  
LOUIS E. BRASWELL  
HAROLD D. PARKMAN  
G. PORTER BROCK, JR.  
HARWELL E. COALE, JR.  
STEPHEN G. CRAWFORD  
JERRY A. McDOWELL

August 19, 1965

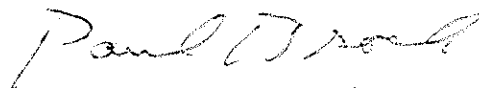
Mrs. Alice Duck, Clerk  
Circuit Court of Baldwin County  
County Courthouse  
Bay Minette, Alabama

Re: Childress vs. Thompson-Hayward  
Chemical Co.; Case No. 4686

Dear Mrs. Duck:

Enclosed are the answers of Thompson-Hayward to the  
interrogatories propounded by the plaintiff.

Yours very truly,



For the Firm

PB.rw  
Encl.

cc: Norborne Stone, Esq. (Encl.)



PAUL CHILDRESS and JOY : IN THE CIRCUIT COURT OF  
CHILDRESS, :  
Plaintiffs : BALDWIN COUNTY, ALABAMA  
vs. : AT LAW  
THOMPSON-HAYWARD CHEMICAL :  
COMPANY, ET AL, :  
Defendants. : CASE NO. 4686

NOTICE OF APPEAL

Comes now the defendant, Thompson-Hayward Chemical Company, a corporation, and gives notice of its appeal from the judgment of the Circuit Court of Baldwin County, Alabama rendered on the 12th day of September, 1962, to the Supreme Court of Alabama.

W. C. Boone, Jr.  
W. C. Boone, Jr., Esq.

Paul W. Brock  
Paul W. Brock, Esq.  
Attorneys for Defendant, Thompson-Hayward Chemical Company, a corporation

SECURITY FOR COSTS OF APPEAL

We hereby acknowledge ourselves surety for all costs of the foregoing appeal from the judgment of the Circuit Court of Baldwin County, Alabama, rendered on September 12, 1962, and we hereby agree to pay all such costs. For the payment of this bond, we do hereby waive our rights of exemption to personal property under the Constitution and Laws of the State of Alabama.

THOMPSON-HAYWARD CHEMICAL COMPANY,  
a corporation

By: W. C. Boone, Jr. (PRINCIPAL)  
As its Attorney

FILED

SEP 25 1962

ALICE I. DUCK, CLERK  
REGISTER

HARTFORD ACCIDENT & INDEMNITY COMPANY,  
a corporation,

By: *Robert H. Shreder* (SURETY)  
As its Attorney-In-Fact

TAKEN and approved on this 25 day of September,  
1962.

*Alice Duck*  
Alice Duck, Clerk, Circuit Court,  
Baldwin County, Alabama

C E R T I F I C A T E

I hereby certify that I have mailed a true and correct copy of the foregoing Notice of Appeal to Harry Wilters, Esq., Attorney for defendants Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla, d/b/a A. Bertolla & Sons at his office in Bay Minette, Alabama, by depositing a copy of same in the United States Mail, postage prepaid to Mr. Wilters at his said office in Bay Minette, Alabama on Sept 25, 1962.

*W. C. Boone*

PAUL CHILDRESS and JOY  
CHILDRESS,

Plaintiffs

vs.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, ET AL,

Defendants.

: IN THE CIRCUIT COURT OF  
:  
: BALDWIN COUNTY, ALABAMA  
:  
: AT LAW  
:  
:  
:  
: CASE NO. 4686

NOTICE OF APPEAL

Comes now the defendant, Thompson-Hayward Chemical Company, a corporation, and gives notice of its appeal from the judgment of the Circuit Court of Baldwin County, Alabama rendered on the 12th day of September, 1962, to the Supreme Court of Alabama.

W. C. Boone, Jr.  
W. C. Boone, Jr., Esq.

Paul W. Brock  
Paul W. Brock, Esq.  
Attorneys for Defendant, Thompson-Hayward Chemical Company, a corporation

SECURITY FOR COSTS OF APPEAL

We hereby acknowledge ourselves surety for all costs of the foregoing appeal from the judgment of the Circuit Court of Baldwin County, Alabama, rendered on September 12, 1962, and we hereby agree to pay all such costs. For the payment of this bond, we do hereby waive our rights of exemption to personal property under the Constitution and Laws of the State of Alabama.

THOMPSON-HAYWARD CHEMICAL COMPANY,  
a corporation

FILED

SEP 25 1962

ALICE J. DUCK, CLERK  
REGISTER

By: W. C. Boone, Jr. (PRINCIPAL)  
As its Attorney

HARTFORD ACCIDENT & INDEMNITY COMPANY,  
a corporation,

By: *[Signature]*

As its Attorney-in-Fact

(SURETY)

TAKEN and approved on this \_\_\_\_ day of September,  
1962.

Alice Duck, Clerk, Circuit Court,  
Baldwin County, Alabama

C E R T I F I C A T E

I hereby certify that I have mailed a true and correct copy of the foregoing Notice of Appeal to Harry Wilters, Esq., Attorney for defendants Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla, and J. F. Bertolla, d/b/a A. Bertolla & Sons at his office in Bay Minette, Alabama, by depositing a copy of same in the United States Mail, postage prepaid to Mr. Wilters at his said office in Bay Minette, Alabama on Sept 25, 1962.

*W. C. Doone*

FILED

SEP 25 1962

ALICE I. DUCK, CLERK  
BALDWIN COUNTY

PAUL CHILDRESS, JR. and	)	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	)	
	)	
Plaintiffs	)	BALDWIN COUNTY, ALABAMA
	)	
vs.	)	
	)	AT LAW
THOMPSON-HAYWARD CHEMICAL	)	
COMPANY, a corporation,	)	
ET AL,	)	
	)	
Defendants.	)	CASE NO. 4686
	)	

CITATION ON APPEAL

TO: Paul Childress, Jr. and Joy Childress, Plaintiffs  
Norborne Stone, Esq., Plaintiffs' Attorney  
Angelo Bertolla, Alex S. Bertolla, R. F. Bertolla,  
and J. F. Bertolla, individually and doing business  
as A. Bertolla and Sons.  
Harry Wilters, Esq., Attorney for Defendants, Angelo  
Bertolla, Alex S. Bertola, R. F. Bertolla, and J. F.  
Bertolla, individually and doing business as A.  
Bertolla and Sons.

WHEREAS, Thompson-Hayward Chemical Company, a cor-  
poration, one of the defendants in the above styled cause,  
has prayed for and obtained an appeal to the Supreme Court  
of Alabama, from the judgment and jury verdict rendered  
in the above styled cause by the Circuit Court of Baldwin  
County, Alabama on the 12th day of September, 1962, and  
has given bond in the sum of \$6,500, superseding said  
judgment, and security for the costs of said appeal;  
said appeal being made returnable to the next term of  
the said Supreme Court of Alabama.

NOW, THEREFORE, you are hereby cited to appear at  
the Supreme Court of the State of Alabama at the said  
next term of same, and defend on said appeal, if you  
think proper so to do.

WITNESS my hand and seal on the 15 day of September,  
1962.

Alice Duck  
Alice Duck, Clerk, Circuit Court,  
Baldwin County, Alabama

ACCEPTANCE OF NOTICE OF APPEAL

I hereby accept service of copy of the above  
Citation On Appeal, waiving any and all further notice  
of said appeal.

SIGNED and sealed this 2 day of October ~~September~~, 1962.

John Earl Chason  
Attorney for Plaintiffs

Robert M Branden  
Attorney for Angelo Bertolla, Alex S.  
Bertolla, R. F. Bertolla and J. F.  
Bertolla, individually and doing busi-  
ness as A. Bertolla and Sons.

PAUL CHILDRESS, JR. and	:	IN THE CIRCUIT COURT OF
JOY CHILDRESS,	:	
Plaintiffs	:	BALDWIN COUNTY, ALABAMA
	:	AT LAW
vs.	:	
	:	CASE NO. <u>4686</u>
THOMPSON-HAYWARD CHEMICAL	:	
COMPANY, a corporation,	:	
Et al,	:	
Defendants	:	

PLEA IN ABATEMENT

Comes now the defendant, Thompson-Hayward Chemical Company, a corporation, and without waiving the Motion to Quash service previously filed by said defendant now appears again specially and only for the purpose of filing this, its plea in abatement to the complaint filed against it in this cause and, as separate and several grounds of such plea, sets down and assigns the following, separately and severally:

1. Defendant, Thompson-Hayward Chemical Company, is a corporation organized and existing under the laws of the State of Delaware and is not now and has never been chartered under the laws of the State of Alabama.

2. Thompson-Hayward Chemical Company avers that it is not subject to the jurisdiction of this court by virtue of the fact that it has no place of business in the State of Alabama; it neither owns nor leases nor rents any property, real or personal in the State of Alabama; it has no agent, servant or employee residing in the State of Alabama; and that it does no other character of business within the State of Alabama which would subject it to

the jurisdiction of an Alabama Court.

Wherefore, premises considered, this defendant requests that the Court abate this cause as to it, and for such other relief, general or special, as it might be entitled to, premises considered.

THOMPSON-HAYWARD CHEMICAL  
COMPANY, A CORPORATION

By

Robert S. Thompson  
Its President

ATTEST:

McDermott  
Its Treasurer

By

W. C. Boxer  
Attorney for said Specially  
Appearing Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE,  
GREAVES & JOHNSTON

STATE OF MISSOURI:

COUNTY OF Jackson:

Personally appeared before me, the undersigned authority in and for said county in said state, Robert Smock Thompson, whose name is signed to the foregoing instrument and who, being first duly sworn, on oath deposes and says that he is president of Thompson-Hayward Chemical Company, and as such has authority



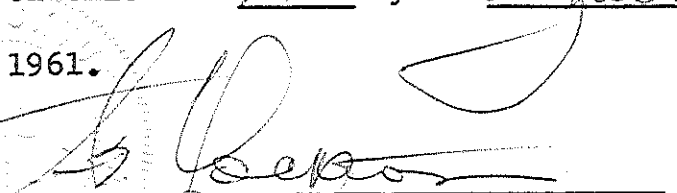
to make this affidavit on behalf of said corporation; that he has read the foregoing plea in abatement and that the matters and things therein stated are true and correct.

  
Robert Smock Thompson

Subscribed and sworn to before me

on this the 14<sup>th</sup> day of August,

1961.

  
Notary Public, Jackson County,  
Missouri.

My Commission Expires August 13, 1962

FILED

AUG 18 1961

ALICE J. DUCK, CLERK  
REGISTER

PAUL CHELDRASS, JR., AN NOY CHELDRASS VS THOMPSON  
 HAWARD CHEMICAL COMPANY, a corporation, et al

**INSTRUCTIONS TO DELIVERING EMPLOYEE**

☒ Deliver *ONLY* to addressee ☐ Show address where delivered

*(Additional charges required for these services)* **NOT GIVEN**

**RETURN RECEIPT**

Received the numbered article described on other side

SIGNATURE OR NAME OF ADDRESSEE (not always required)

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED **APR 26 1961** ADDRESS WHERE DELIVERED (not required if item sent)

100-100-15480-1 GPO

for  
 Chason & Stone  
 to accept service

INSURED NO. 1

REGISTERED NO. 1

SECRETARY OF STATE

MONTGOMERY, ALABAMA

APR 28 1961

U.S. AIR FORCE

POST OFFICE DEPARTMENT

U.S. AIR FORCE