

25929. Wheat. (F.D.C. No. 39824. S. Nos. 48-514/5 M.)

QUANTITY: 122,720 lbs. at Emison, Ind.

SHIPPED: 12-12-56, from Chicago, Ill. This was a return shipment.

LIBELED: 12-26-56, S. Dist. Ind.

CHARGE: 402(a)(2)—the article was a raw agricultural commodity and contained, when shipped, a pesticide chemical, namely, a mercurial compound, which is unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance of a mercurial compound on wheat has been prescribed by regulations.

DISPOSITION: 1-4-57, Cargill, Inc., Minneapolis, Minn., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for the purpose of allowing the claimant to ship the wheat to the Dry Fork Milling Co., Dry Fork, Va., to be processed into paste under the supervision of the Food and Drug Administration.

The decree also provided that the wheat was not to be sold or disposed of for human or animal consumption, or sold or disposed of contrary to the provisions of the Federal Food, Drug and Cosmetic Act.

On 7-19-57, the Government filed a motion for an order forfeiting the bond, on the grounds that the claimant had failed to comply with the terms and conditions of the bond and the decree. On 6-20-58, by consent, after a pre-trial conference, the court entered the following decree:

HOLDER, District Judge: "Comes now the United States of America by Don A. Tabbert, United States Attorney for the Southern District of Indiana, and Cargill, Inc., claimant herein, and agree to the following facts:

"That on January 4, 1957, a consent decree was entered herein condemning the article of food, namely 122,720 lbs., more or less, of wheat, seized in this action. This decree, among other things, permitted the claimant to retake custody of the condemned wheat for the purpose of shipping the same to the Dry Fork Milling Co. of Dry Fork, Va., to be processed into paste under the supervision or with the approval of the Food and Drug Administration. The decree further prohibited the sale or disposition of the wheat for human or animal consumption.

"Provision was made in said decree for the filing of penal bond in the sum of three thousand dollars (\$3,000) 'conditioned that said wheat herein libeled shall not be sold or disposed of contrary to the provision of the Food, Drug, and Cosmetic Act.' Pursuant to said decree claimant filed a penal bond in the required sum with claimant named as principal therein and The Summit Fidelity & Surety Co. as surety thereon. The bond was duly conditioned upon compliance with the terms of the decree and that the libeled wheat not be sold or disposed of contrary to the provisions of the Food, Drug, and Cosmetic Act.

"On January 4, 1957, the claimant shipped the condemned wheat to the Dry Fork Milling Co. of Dry Fork, Va. The wheat had been sold to the latter company with a notation on the contract that it was 'unfit for human or animal consumption.' The Dry Fork Milling Co. not having been informed of the outstanding Court order, processed the wheat into flour for paste and mixed the bran from the conversion into animal feed which was sold. The conversion into flour and the use of the bran was done without the supervision or approval of the Food and Drug Administration.

"The conduct of Cargill, Inc., in failing to comply with the conditions of the bond was not wilful or devious with intent to evade its obligations under said bond.

"The United States of America consents to accept the sum of two thousand dollars (\$2,000) as settlement on the forfeiture of the bond.

"Claimant consents that this decree be entered forfeiting the bond in the agreed sum of two thousand dollars (\$2,000).

"The Court being fully advised in the premises it is on motion of the parties hereto—

"ORDERED, ADJUDGED, AND DECREED that the claimant's conduct and the facts aforesaid constitute a breach of the terms and conditions of the bond executed by claimant pursuant to the decree entered by this Court as aforesaid.

"IT IS FURTHER ORDERED that the Motion of the United States of America to declare a forfeiture of the bond aforesaid is sustained, and the agreed amount of two thousand dollars (\$2,000) is forfeited, and the United States of America have judgment against claimant, Cargill, Inc., a corporation, and The Summit Fidelity & Surety Co., a corporation, in the sum of two thousand dollars (\$2,000)."

25930. Wheat. (F.D.C. No. 43486. S. No. 47-219 P.)

QUANTITY: 100,000 lbs. at Chicago, Ill.

SHIPPED: 10-5-59, from Walnut, Ill., by Atherton Grain Co., for delivery at Buffalo, N.Y.

LIBELED: 10-21-59, N. Dist. Ill.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 10-27-59. Consent—claimed by Atherton Grain Co. and converted into animal feed.

25931. Wheat. (F.D.C. No. 43016. S. No. 60-831 P.)

QUANTITY: 100,800 lbs. at Buffalo, N.Y.

SHIPPED: 5-5-59, from Coldwater, Mich., by Williams Grain Corp.

LIBELED: 5-15-59, W. Dist. N.Y.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-1-59. Consent—claimed by Williams Grain Corp., and denatured for use as animal feed.

25932. Wheat. (F.D.C. No. 43015. S. No. 60-830 P.)

QUANTITY: 79,225 lbs. at Buffalo, N.Y.

SHIPPED: 5-1-59, from Cohoctah, Mich., by Floyd E. Lott & Sons.

LIBELED: 5-15-59, W. Dist. N.Y.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 5-25-59. Consent—claimed by Floyd E. Lott & Sons and denatured.

25933. Wheat. (F.D.C. No. 43019. S. No. 42-727 P.)

QUANTITY: 120,000 lbs. at Spokane, Wash.

SHIPPED: 5-1-59, from Chester, Mont., by General Mills, Inc.

LIBELED: 5-15-59, E. Dist. Wash.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 5-21-59. Consent—claimed by Martin M. Lanser Co., Spokane, Wash. Segregated; 12,670 lbs. converted into animal feed.

25934. Wheat. (F.D.C. No. 43421. S. No. 52-179 P.)

QUANTITY: 81,200 lbs. at Minneapolis, Minn.

SHIPPED: 7-27-59, from Rake, Iowa, by Farmers Cooperative Elevator.

LIBELED: 8-11-59, Dist. Minn.