

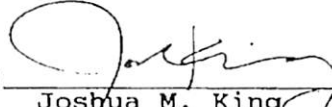
1 Clifford A. Chanler, State Bar No. 135534
2 Joshua M. King, State Bar No. 165987
3 CHANLER & SOMERS
4 1700 Montgomery Street, Suite 110
5 San Francisco, CA 94111
6 Tel: (415) 391-1122
7
8 Attorneys for Plaintiff
9 AS YOU SOW

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN FRANCISCO

12 AS YOU SOW, a non-profit) Case No. 970377
13 corporation,)
14)
15 Plaintiff,)
16 v.) STIPULATION FOR
17) ENTRY OF JUDGMENT
18)
19 A.W. CHESTERTON COMPANY; and)
20 DOES 1 through 1000,)
21)
22 Defendants.)

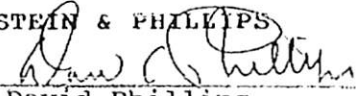
23 IT IS HEREBY STIPULATED, by and between plaintiff As
24 You Sow and defendant A.W. Chesterton Company, through their
25 respective representatives, that judgment in the above-
26 entitled action be entered in accordance with the terms of the
27 settlement agreement between the parties, which is attached
28 hereto as Exhibit A.

Dated: December 13, 1995

by: 
Joshua M. King
Attorneys for Plaintiff
AS YOU SOW

GOLDSTEIN & PHILLIPS

Dated: December 6, 1995

by: 
David Phillips
Attorneys for Defendant
A.W. CHESTERTON COMPANY

SETTLEMENT AGREEMENT

On November 21, 1995 in San Francisco, California, **As You Sow** ("AYS") and **A.W. Chesterton Company** ("A.W. CHESTERTON") agreed to the following terms and conditions:

WHEREAS:

AYS is a not-for-profit public interest foundation dedicated to promoting consumer and worker awareness, protecting the environment and improving human health;

A.W. CHESTERTON is a corporation headquartered in Massachusetts that manufactures and/or distributes various products in the State of California that contain the following chemicals listed pursuant to Proposition 65: nickel and nickel compounds, toluene and perchloroethylene;

A list of the products that contain one or more of the chemicals listed above and which are covered by this Agreement is provided in Exhibit A (the "Products");

The Products have been distributed and sold by A.W. CHESTERTON for use in California since at least June 15, 1993;

On December 9, 1994 and June 6, 1995, AYS served A.W. CHESTERTON and all of the requisite public enforcement agencies with documents entitled "60-Day Notice" that provided A.W. CHESTERTON and such public enforcers with notice that A.W. CHESTERTON was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to the Proposition 65-listed chemicals nickel and nickel compounds, toluene and perchloroethylene; and

On June 15, 1995, AYS filed a complaint entitled As You Sow v. A.W. Chesterton Company, et al. (No. 970377) in the San Francisco Superior Court, naming A.W. CHESTERTON as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly are exposed to chemicals listed pursuant to Proposition 65 contained in certain A.W. CHESTERTON products.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Warnings on Products. Beginning as soon as reasonably practicable, A.W. CHESTERTON shall initiate revisions to its current Product labeling. A.W. CHESTERTON shall use its best efforts to ensure that Product label changes are made as quickly as possible; however, A.W. CHESTERTON agrees that as of

January 1, 1996, it shall not ship (or cause to be shipped) any of the Products for sale or use in or into the State of California unless each such Product contains the appropriate warning statement on a sticker or product label as follows:

- 1.1. For Products containing a chemical listed by the State of California as known to cause birth defects or other reproductive harm:

"WARNING: This product contains a chemical(s) known to the State of California to cause birth defects or other reproductive harm."

- 1.2. For Products containing a chemical listed by the State of California as known to cause cancer:

"WARNING: This product contains a chemical(s) known to the State of California to cause cancer."

- 1.3. For Products containing any combination of chemicals listed by the State of California as known to cause cancer and known to cause birth defects or other reproductive harm:

"WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm."

The warning statement shall be prominent and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual. The parties agree that the sample stickers attached hereto as Exhibit B satisfies this requirement.

2. Warnings For Products in Commerce. A.W.
CHESTERTON agrees that within sixty (60) days from the date this Agreement is executed, it shall provide warning materials by certified mail to the customers that A.W. CHESTERTON knows or has reason to believe sell or distribute the Products in California in an effort to ensure that users receive Proposition 65 warnings for Products that have not been labeled in accordance with Section 1. Such warning materials shall include a reasonably sufficient number of warning stickers (considering the size of each particular customer and the amount of Products each customer has purchased) and a letter of instruction for the placement of the stickers. A sample of these materials is attached hereto as Exhibit C.

3. **Restitution.** A.W. CHESTERTON agrees to pay \$1,500 to AYS upon execution of this Agreement as restitution. This payment, which is made pursuant to Business & Professions Code §17203, shall be made to the AYS Proposition 65 Enforcement Fund.

4. **Reimbursement of Fees and Costs.** A.W. CHESTERTON agrees to reimburse AYS for its investigation fees and costs, reasonable attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to A.W. CHESTERTON's attention, litigating and negotiating a settlement in the public interest. Upon execution of this agreement, A.W. CHESTERTON shall pay AYS \$2,900 as reimbursement of its investigation fees and costs and \$3,100 as reimbursement of its attorney fees and costs incurred in this matter.

5. **AYS Release.** AYS, by this Agreement, waives all rights to institute action against A.W. CHESTERTON, its distributors or customers, whether under Proposition 65 or Business & Profession Code §§17200 et seq. based on A.W. CHESTERTON's failure to warn about exposure to Proposition 65 listed chemicals contained in any of the Products manufactured or distributed on or prior to the date that this Agreement required Product labeling, January 1, 1996.

6. **A.W. CHESTERTON Release.** A.W. CHESTERTON, by this Agreement, waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys and representatives (the "AYS Releasees") for all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 et seq. against A.W. CHESTERTON.

7. **MSDS Revisions.** A.W. CHESTERTON agrees to revise each Material Safety Data Sheet ("MSDS") pertaining to each of the Products listed on Exhibit "A" of this Agreement to include the applicable warning language set forth in ¶1 of this Agreement. Final MSDSs incorporating the revised warning language will begin to be distributed in the normal course of business on or before January 1, 1996.

8. **Change in Law.** In the event that any law, rule, regulation or final decision of any legislative, judicial or executive body with jurisdiction becomes effective or is entered, which renders the warnings agreed to under Paragraphs 1 and 2 of this Agreement unnecessary or inappropriate to comply with applicable laws, A.W. CHESTERTON may, at its option, cease placing the warnings required by Paragraphs 1 and 2 on the Products and Material Safety Data Sheets, provided, however, that A.W. CHESTERTON shall provide any warnings that continue to be required under applicable laws, rules and regulations. A.W. CHESTERTON shall provide AYS thirty (30) days prior written notice of its intent to so limit the warning provisions under Paragraphs 1 and 2 of the Agreement and shall provide AYS with a

written explanation for the basis of its contention that any new or revised law, rule, regulation or final decision limits or otherwise renders inapplicable the warning provisions of Proposition 65 to the Products. Notwithstanding the terms of this Paragraph, AYS shall not be required under any circumstances to refund or return any amount paid pursuant to Paragraphs 3 and 4 of this Agreement.

9. Warranties and Representations. The parties make the following representations and warranties:

9.1. A.W. CHESTERTON represents and warrants as follows:

9.1.1. Each of the Products listed in Exhibit "A" contains one or more substances known to the state of California to cause cancer or birth defects or other reproductive toxicity, and that A.W. CHESTERTON has no analytical, risk assessment, or other data indicating that an exposure to any or all Products listed in Exhibit "A" poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c).

9.1.2. In the event that A.W. CHESTERTON obtains analytical, risk assessment, or other data that shows that an exposure to any or all Products listed in Exhibit "A" poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c), A.W. CHESTERTON shall provide AYS with 90 days prior written notice of its intent to limit or eliminate the warning provisions under Section 1 and shall provide AYS with all such supporting data. Within thirty (30) days of receipt of A.W. CHESTERTON's exposure data, AYS shall provide A.W. CHESTERTON with written notice of its desire to challenge the data (in the event that AYS chooses to make such a challenge), and AYS and A.W. CHESTERTON shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by AYS of such notice of challenge, AYS and A.W. CHESTERTON agree to submit such challenge to binding arbitration, with an arbitrator acceptable to both parties. The prevailing party shall be entitled to reasonable attorney's fees and costs associated with such an arbitration. If AYS does not challenge A.W. CHESTERTON's notice or the arbitrator determines that no warning is required for a particular Product or Products, A.W. CHESTERTON shall no longer be required to provide the warnings described in Section 1 of this Agreement for those Products.

9.1.3. A.W. CHESTERTON understands that the sales data provided to AYS by A.W. CHESTERTON in verified response to AYS' Special Interrogatories was a material factor upon which AYS has relied to determine the amount of restitution

in Paragraph 3 of this agreement. The sales data provided in the above-referenced responses is true and accurate. A.W. CHESTERTON acknowledges that, in the event AYS finds that the sales data provided is materially inaccurate, all other parts of this Agreement notwithstanding, AYS will have the right to rescind this Agreement and re-institute an enforcement action against A.W. CHESTERTON. In such a case, all applicable statutes of limitation shall be deemed tolled for the period between June 15, 1995 (the date AYS filed the instant action) and the date AYS notifies A.W. CHESTERTON that it is rescinding this Agreement pursuant to this subpart.

10. Stipulated Judgment. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the San Francisco Superior Court in accordance with the terms of this agreement. None of the monies paid by A.W. CHESTERTON to AYS under Paragraphs 3 and 4 of this Agreement shall be disbursed by AYS until the stipulated judgment has been approved and filed in San Francisco Superior Court.

11. Severability. In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

12. Attorneys' Fees. In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

13. Governing Law. The terms of this Agreement shall be governed by the laws of the State of California.

14. Notices. All correspondence to AYS shall be mailed to:

Joshua M. King, Esq.
Chanler & Somers
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to A.W. CHESTERTON shall be mailed to:

Mark Burak, Esq
Cooley, Manion, Moore & Jones
21 Custom House Street
Boston, MA 02110-3536

15. No Admissions. Nothing in this Agreement shall be construed as an admission by A.W. CHESTERTON of any fact,

finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by A.W. CHESTERTON of any fact, finding, conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise affect the obligation, responsibilities, and duties of A.W. CHESTERTON under this Agreement.

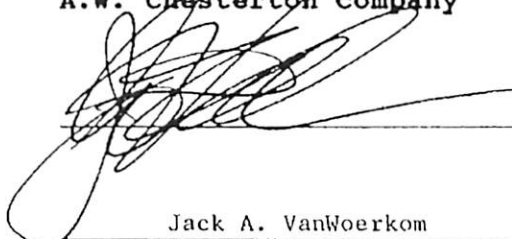
16. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

AS YOU SOW

A.W. Chesterton Company



LISA S. WIGGINS

Jack A. VanWoerkom

Printed Name

Printed Name

December 12, 1995

November 21, 1995

Date

Date

CHESTERTON®
THE NEW STANDARD FOR RELIABILITY

A.W. CHESTERTON CO. SEALING DEVICES PUMP SYSTEMS TECHNICAL PRODUCTS
MIDDLESEX INDUSTRIAL PARK/225 FALLON ROAD/P.O. BOX 9101/STONEHAM, MA 02180-9101 USA/TEL: (617) 438-7000/TELEX: 94-9417/FAX: (617) 438-8971

LL 11/95

EXHIBIT A

CHESTERTON® PRODUCT LIST

1. CA to cause cancer

- 231 Motor Degreaser
- 273 Electric Motor Cleaner
(Aerosol and Bulk)
- 725 Nickel Anti-Seize Compound
(Aerosol and Bulk)
- 772 Premium Nickel Anti-Seize
Compound

2. CA to cause reproductive harm

- 371 Blue Layout Fluid
- 421 Clear Protective Coating
(Aerosol and Bulk)
- 438 Teflon* Coating
- 677 Dry Lubricant
- 738 Belt-Flo®
- 860 Moldable Polymer Gasketing
(Aerosol)

*DuPont's registered trademark

EXHIBIT B
[Exemplary Stickers]

Warning: *This product contains a chemical(s) known to the State of California to cause cancer.*

Warning: *This product contains a chemical(s) known to the State of California to cause birth defects or other reproductive harm.*

EXHIBIT C

(A. W. CHESTERTON Letterhead)

November 20, 1995

RETURN RECEIPT REQUESTED

IMPORTANT LEGAL NOTICE

Dear California Distributor:

SUBJECT: California Proposition 65 Warnings

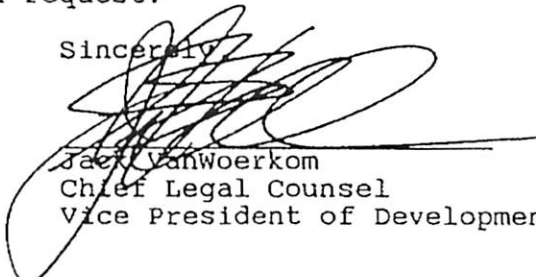
This letter is to advise you that the A. W. Chesterton Company products on the attached list contain a substance known to the State of California to cause cancer and/or birth defects or other reproductive harm. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), the purchasers and/or users of those products must be given clear and reasonable warning that it contains a carcinogen, a reproductive toxin or both.

Although A. W. CHESTERTON has begun labelling the listed products with proper warnings, you may have in stock certain products that were distributed before the new labelling was implemented. Until those products have been sold, you must affix the enclosed warning sticker to the Material Safety Data Sheet (MSDS) AND container, cap, label or package of each listed product which does not have a Proposition 65 warning on its label. The sticker must be affixed so that it is conspicuous and likely to be read and understood by an ordinary individual under customary conditions of purchase.

Failure to provide a Proposition 65 warning for the listed products may subject you to legal action by the California Attorney General or various environmental groups, wherein monetary penalties of up to \$2,500 per violation could be sought.

Should you have any questions or concerns about this matter, please do not hesitate to contact Linda Loreth at 1-617-481-2309 by phone, or by mail at the above address. We have enclosed one hundred (100) warning stickers for your convenience in complying with Proposition 65. In addition, we will be glad to supply additional warning stickers upon request.

Sincerely,


Jaak Vanwoerkom
Chief Legal Counsel
Vice President of Development

EH&S95236