

Attorneys for Defendant
CARBOLINE COMPANY

MICHAEL DIPIRRO,
Plaintiff,
vs.
CARBOLINE COMPANY, A SUBSIDIARY OF
RPM, INC.; AND DOES 1 THROUGH 1000,
Defendants.

1 This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by and
2 between Michael DiPirro and Carboline Company, a subsidiary of RPM, Inc. (hereinafter "Carboline"),
3 as of January 29, 2003, (the "Effective Date"). The parties agree to the following terms and conditions:

4 **WHEREAS:**

5 A. Michael DiPirro asserts that he is an individual residing in San Francisco, California,
6 who seeks to promote awareness of exposures to toxic chemicals and to improve human health by
7 reducing or eliminating hazardous substances contained in consumer products;

8 B. Carboline asserts that it is an "out of state" manufacturer of industrial use products
9 that does not maintain a facilities presence in the State of California. During the past four years,
10 Carboline has manufactured, distributed, and sold Neoprene Adhesive F-1, a waterproof adhesive that
11 contains toluene, a substance "known to the State of California to cause birth defects or other
12 reproductive harm." This product is sold in various sizes. The smallest size, a 3 oz. tube, does not
13 contain a Proposition 65 warning on the label, but does contain two statements on its label that read;
14 1) on the back panel - "For Industrial Use, " and 2) on the side panel - "For Industrial Use Only." All
15 other sizes contained a Proposition 65 Warning on the label. Carboline also asserts that the Material
16 Safety Data Sheet that Carboline supplies to its customers contains a Proposition 65 warning;

17 C. The product that is subject to this lawsuit is Neoprene Adhesive F-1 (the "Product");

18 D. On August 3, 2001, Michael DiPirro ("DiPirro") first served Carboline and other
19 public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided
20 Carboline and the public enforcers with notice of DiPirro's belief that Carboline was in violation of
21 Health & Safety Code §25249.6 for allegedly failing to warn California consumers that 3 oz tubes of the
22 Product will expose them to the Listed Chemical—*i.e.*, toluene; and

23 E. On October 12, 2001, Michael DiPirro, alleging that he was bringing the action on
24 behalf of the public interest, filed a complaint entitled *DiPirro v. Carboline Company*, in the Alameda
25 County Superior Court. The complaint named Carboline as a defendant and alleged violations of
26 Business & Professions Code §17200 and Health & Safety Code §25249.6.

27 F. Carboline asserts that it does not manufacture, distribute or sell the Product any
28 longer. In March 2002, Carboline states that it shipped its last 3 oz. tube of the Product to California. In

1 June 2002, Carboline stopped manufacturing any more Products. In July 2002, Carboline shipped the
2 remaining inventory of quart and gallon containers (allegedly with Proposition 65 warnings on the
3 labels). Carboline has no plans to resume the manufacture, distribution, or sale of the Product.

4 G. On or about August 16, 2002, Carboline reminded each of its California customers in
5 writing that Neoprene Adhesive F-1 is intended to be an industrial use only product and must not be
6 resold to consumers. Carboline states that its letter informed its customers that that resale of Neoprene
7 Adhesive F-1 would subject them to liability.

8 H. Without admitting liability and to avoid prolonged litigation, the Parties enter into
9 this agreement to resolve all claims pursuant to Proposition 65 and the California Business and
10 Professions Code relating to Carboline's waterproof adhesive products ("F-1 Adhesive") that have been
11 brought or could have been brought by Michael DiPirro.

12 **NOW THEREFORE, MICHAEL DIPIRRO AND CARBOLINE AGREE AS FOLLOWS:**

13 **No Admissions.** Nothing in this Agreement shall be construed as an admission by
14 Carboline of any fact, finding, issue of law, or violation of law; nor shall compliance with this
15 Agreement constitute or be construed as an admission by Carboline of any fact, finding, conclusion,
16 issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the
17 obligations, responsibilities, and duties of Carboline under this Agreement.

18 **Product Health Hazard Warnings.** Should Carboline resume manufacture of Neoprene
19 Adhesive F-1 (or any waterproof adhesive of the same chemical formula under another name),
20 Carboline agrees that it will not knowingly ship, or cause to be shipped, any such product to the State of
21 California for sale to consumers unless the product complies with section 2.1 below:

22 **Warning Language**

23 Neoprene Adhesive F-1 shall bear one of the following warning statements:

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

27 or
28

1 **“WARNING: This product contains a chemical known to the State of**
2 **California to cause birth defects or other reproductive**
3 **harm.”**

4 **Penalty Payment.** Carboline agrees to pay the sum of \$20,000, as civil fines pursuant to
5 California Health & Safety Code §25249.7. Payment shall be made to Sheffer & Chanler LLP In Trust
6 for Michael DiPirro, and he shall distribute the funds in accordance with applicable law and regulations.
7 This amount shall be paid no later than Monday, February 3, 2003. Such funds shall be held by Sheffer
8 & Chanler LLP in trust for Michael DiPirro until the Alameda County Superior Court approves and
9 enters the Consent Judgment. If the Consent Judgment is not approved by the Court, DiPirro will return
10 all funds, with interest thereon at a rate of 1.25% per annum, within ten (10) calendar days of notice of
the Court’s decision.

11 **Reimbursement Of Fees And Costs.** The parties acknowledge that, once the injunctive
12 relief provisions and other monetary terms had been resolved, DiPirro and his counsel offered to resolve
13 the issue of reimbursement of attorneys’ fees and costs through a noticed motion pursuant to C.C.P.
14 §1021.5. Carboline then expressed a desire to resolve the fee and cost issue shortly after the other
15 settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the
16 compensation due to DiPirro and his counsel under the private attorney general doctrine codified at
17 C.C.P. §1021.5 for all work performed through the Effective Date of the Agreement.

18 Pursuant to C.C.P. §1021.5, Carboline agrees to reimburse DiPirro and his counsel for
19 their reasonable attorneys’ fees and costs incurred as a result of investigating, litigating and negotiating a
20 settlement, and obtaining an entry of judgment in the public interest in the amount of \$77,700.
21 Carboline agrees to pay the total sum of \$77,700 no later than Monday,, February 3, 2003. Such funds
22 shall be held by Sheffer & Chanler LLP in trust until the Alameda County Superior Court approves and
23 enters the Consent Judgment. If the Consent Judgment is not approved by the Court, DiPirro will return
24 all funds, with interest thereon at a rate of 1.25% per annum, within ten (10) calendar days of notice of
25 the Court’s decision. Payment should be made payable to the “Sheffer & Chanler LLP”.

26 **Michael DiPirro's Release of Carboline.** Michael DiPirro, by this Agreement, on
27 behalf of himself, his agents, representatives, attorneys, and assigns, and in the interest of the general
28 public, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and

1 releases all claims, liabilities, obligations, losses, costs, expenses, fines, and damages, against Carboline,
2 its holding company, RPM, Inc., and its suppliers, affiliated companies, distributors, customers
3 (including, but not limited to, B3 Manufacturing, Diving Unlimited International, McMaster-Carr
4 Supply, Munnell & Sherrill, Inc., Pacific River Supply, and Triangle Brass .) directors, officers,
5 employees, successors and assigns, whether under Proposition 65 or Business & Professions Code
6 §17200 and §17500 based on Carboline's alleged failure to warn about exposure to (and identify the
7 presence of) the Listed Chemical, as defined in DiPirro's 60-day notice and in his complaint, contained
8 in the Product.

9 **Carboline's Release of Michael DiPirro.** Carboline, by this Agreement, waives all
10 rights to institute any form of legal action against Michael DiPirro or his attorneys or representatives, for
11 all actions or statements made by Michael DiPirro, and his attorneys or representatives, in the course of
12 seeking enforcement of Proposition 65, Business & Professions Code §17200 and §17500 against
13 Carboline.

14 **Court Approval.** If, for any reason, the Court does not ultimately approve this
15 Agreement, it shall be deemed null and void. In the event that any third party, including any public
16 enforcer, objects or otherwise comments to one or more provisions of this Agreement, Carboline agrees
17 to use its best efforts to support each of the terms of the Agreement, as well as to seek judicial approval
18 of this Agreement.

19 **Severability.** Should any of the provisions of this Agreement be held by a court to be
20 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

21 **Attorneys' Fees.** Should a dispute arise with respect to any provision(s) of this
22 Agreement (including, but not limited to, disputes arising from the payments to be made under this
23 Agreement), the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

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

26 **Notices.** All correspondence to Michael DiPirro shall be mailed to:

27 Gregory M. Sheffer, Esq.
28 Sheffer & Chanler LLP
4400 Keller Avenue, Suite 200
Oakland, CA 94605

(510) 577-0747

All correspondence to Carboline shall be mailed to:

Carol Rene Brophy, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
50 California Street, 34th Floor
San Francisco, CA 94111
Tel: (415) 398-3600

Compliance With Reporting Requirements (Health & Safety Code §25249.7(f)). The parties acknowledge that the reporting provisions of Health & Safety Code §25249.7(f) apply to this Agreement. Counsel for DiPirro shall comply with that section by submitting the required reporting form to, and serving a copy of this Agreement on, the California Attorney General's Office when noticing the hearing on DiPirro's motion to approve the parties' settlement.

Counterparts and Facsimile. This Agreement may be executed in counterparts and/or by facsimile, and each counterpart shall be deemed an original, and all counterparts, when taken together, shall constitute one and the same document.

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

AGREED TO:

DATED: January 28, 2003

CARBOLINE COMPANY

Dwayne Meyer
Dwayne Meyer
Director - Technical Product Services

AGREED TO:

DATED: _____

MICHAEL DIPIRRO

Michael DiPirro
Plaintiff

(510) 577-0747

All correspondence to Carboline shall be mailed to:

Carol Rene Brophy, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
50 California Street, 34th Floor
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Authorization. The undersigned are authorized to execute this Agreement on behalf of their respective clients and have read, understood, and agree to all of the terms and conditions of this Agreement.

AGREED TO:

DATED: _____

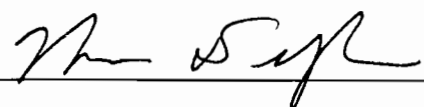
CARBOLINE COMPANY

Dwayne Meyer
Director – Technical Product Services

AGREED TO:

DATED: 1/28/03

MICHAEL DIPIRRO



Michael DiPirro
Plaintiff

1
2 **APPROVED AS TO FORM:**

3 DATED: Jan 28, 2003

GREGORY M. SHEFFER

4
5 ~~SHEFFER & CHANLER LLP~~

Gregory M. Sheffer

6 Attorneys for Plaintiff

Michael DiPirro

7 **APPROVED AS TO FORM:**

8
9 DATED: _____

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

10
11 _____
Carol René Brophy

Attorneys for Defendant

12 Carboline Company

13 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

14
15 DATED: _____

16 JUDGE OF THE SUPERIOR COURT

1
2 **APPROVED AS TO FORM:**

3 DATED: _____

GREGORY M. SHEFFER

4
5 SHEFFER & CHANLER LLP

6 Gregory M. Sheffer
7 Attorneys for Plaintiff
8 Michael DiPirro

9 **APPROVED AS TO FORM:**

10 DATED: Jan. 27, 2003

11 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

12 Carol René Brophy
13 Carol René Brophy
14 Attorneys for Defendant
15 Carboline Company

16 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

17 DATED: _____

18 JUDGE OF THE SUPERIOR COURT