

## SETTLEMENT AGREEMENT

This Settlement Agreement (or "Agreement") is entered into by and between Michael DiPirro and Cobra Anchors Corp., a Pennsylvania corporation ("Cobra"), as of May 9, 2002 (the "Effective Date"). The parties agree to the following terms and conditions:

### WHEREAS:

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

B. Cobra is a company that currently manufactures, distributes and sells in stores operated by Lowe's certain lead anchors. Lead (or lead compounds) is a substance known to the State of California to cause cancer and birth defects (or other reproductive harm);

C. A list of the products which contain lead (or lead compounds) (the "Listed Chemical") and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been distributed and sold in California since October 4, 1998;

D. Cobra asserts that the Products manufactured by Cobra are small anchors, of approximately two inches in length, which are sold to fix objects in concrete or brick walls on the exterior of buildings or other structures. These small anchors come into packages each typically containing four (4) individual anchors and four (4) iron screws;

SETTLEMENT AGREEMENT

E. Cobra asserts that it sold such anchors for a total value of \$2,096.88 in the State of California during year 2000 and annual sales figures for the State of California have been of that order of magnitude since 1998;

F. On July 23, 2001, Michael DiPirro first served Cobra, Lowe's and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Cobra and such public enforcers with notice that Cobra alleged to be in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products they sell in California expose users to the Listed Chemical;

G. After receiving the "60-Day Notice of Violation" from Michael DiPirro, Cobra asserts that it took immediate measures in order to print and affix labels on each package of anchors for sale in the State of California, each such label bearing the following warning statement:

**"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and to cause birth defects (or other reproductive harm).";**

Cobra sent a letter to DiPirro on September 21, 2001 informing him of the asserted actions undertaken by Cobra in response to the 60-Day Notice of Violation.

H. On October 4, 2001, Michael DiPirro filed a complaint entitled Michael DiPirro v. Cobra Anchors Corp., et al. in the San Mateo County Superior Court, naming Cobra and Lowe's as defendants and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 in the interest of the general public in California who allegedly have been exposed to the Listed Chemical contained in certain products that Cobra manufactures, distributes and/or sells, and is sold in various Lowe's retail outlets in California.

I. Nothing in this Agreement shall be construed as an admission by Cobra 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 Cobra of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Cobra under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND COBRA AGREE AS FOLLOWS:**

1. **Product Warnings.** Beginning on May 15, 2002, Cobra agrees that it will not knowingly ship, or cause to be shipped, any Products containing the Listed Chemical in the State of California unless such Products comply with section 1.1 below:

1.1 For all anchors containing lead (or lead compounds), such Products shall bear, in a clear and reasonable manner, the following warning statement:

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

1.2 Cobra shall comply with section 1.1 as long as the warning statement is required by California's Health and Safety Code §25249.6.

2. **Payment Pursuant To Health & Safety Code §25249.7(b).** In light of the factors enumerated in Health & Safety Code §25249.7(b), Cobra agrees to pay a civil penalty of \$500.00. The payment of \$500.00 shall be paid within ten (10) calendar days of the Effective Date. The penalty payment is to be made payable to "Sheffer & Chanler In Trust For Michael DiPirro". Penalty monies shall be apportioned

by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Department of Toxic Substances Control.

**3. Reimbursement Of Fees And Costs.** Under the private attorney general doctrine codified at C.C.P. §1021.5, Cobra shall reimburse DiPirro and his counsel for his fees and costs, incurred as a result of investigating, bringing this matter to Cobra's attention, litigating and negotiating a settlement in the public interest. Cobra shall pay \$9,575.00, except as provided for in paragraph 3.1 below, for all attorneys' fees, expert and investigation fees, and litigation costs. Cobra agrees to pay the total sum of \$9,575.00, except as provided for in paragraph 3.1 below, within ten (10) calendar days of the Effective Date. Payment should be made payable to the "Sheffer & Chanler".

**3.1 Additional Fees and Costs in Seeking Judicial Approval.** The parties acknowledge that, pursuant to recent interpretations of Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Agreement. Accordingly, the parties agree to use their best efforts to file a *Joint Motion to Approve the Agreement* within a reasonable period of time after execution of this Agreement. Pursuant to C.C.P. §1021.5, Cobra agrees to reimburse DiPirro and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this Agreement.

**3.2** DiPirro and his counsel expressly agree that Cobra's liability for payment due under this paragraph for work performed in the trial court shall not exceed \$4,800 if no opposition to the motion (nor objection to the terms of the agreement) is filed or otherwise transmitted by any third party.

**3.3** In the event that any third party, including any public enforcer, objects or otherwise comments to one or more provisions of this Agreement, Cobra

agrees to use its best efforts to support each of the terms of the Agreement, as well as to seek judicial approval of this Agreement.

3.4 In the event that such an objection or opposition is transmitted or filed by any third party, Cobra agrees to reimburse DiPirro for his reasonable attorneys' fees and costs in an amount not to exceed \$5,700 (above the caps provided in paragraphs 3.2 and 3.4, above).

3.5 In the event that defending this Agreement from such objection or opposition from any third party requires a declaration from an expert, then Cobra agrees to reimburse DiPirro for such expert's reasonable fees and costs in an amount not to exceed \$4,600 (above the caps provided in paragraphs 3.2 and 3.4, above).

3.6 In the event that DiPirro and his counsel incur fees in connection with work in the appellate courts as part of the process to obtain judicial approval of this Agreement, Cobra agrees to reimburse DiPirro for his reasonable fees and costs for such efforts without limitation.

3.7 Cobra's payment of DiPirro's legal fees and costs under this subparagraph shall be due within ten (10) calendar days after receipt of a billing statement from DiPirro ("Additional Fee Claim"). Payment of the Additional Fee Claim shall be made payable to the "Sheffer & Chanler." Cobra has the right to object to DiPirro's reimbursement request and may submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California to determine the reasonableness of the additional fees and costs sought, provided that an arbitration claim has been filed with AAA and served on DiPirro within ten (10) calendar days following DiPirro's service of the Additional Fee Claim on Cobra. If an arbitration notice is not

filed with AAA in a timely manner, Cobra's right to arbitrate this matter is waived.

DiPirro may then file a motion, pursuant to C.C.P. §1021.5, with the Court seeking his (and his attorneys') fees and costs incurred as set forth in this paragraph.

**4. Michael DiPirro's Release Of Cobra.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and in the interest of the general public, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Cobra, all of its downstream retailers (including, but not limited to, Lowe's), its distributors, customers, directors, officers, employees, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Cobra's alleged failure to warn about exposure to the Listed Chemical contained in any of the Products.

**5. Cobra's Release Of Michael DiPirro.** Cobra, by this Agreement, waives all rights to institute any form of legal action against Michael DiPirro or his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §17200 against Cobra.

**6. Court Approval.** If, for any reason, this Agreement is not ultimately approved by the Court, it shall be deemed null and void.

**7. Cobra Sales Data.** Cobra understands that the sales data provided to counsel for DiPirro by Cobra was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of Cobra's knowledge, the sales data provided is true and

accurate. In the event that DiPirro discovers facts, which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) business days of Cobra's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Cobra, provided that all sums paid by Cobra pursuant to paragraphs 2 and 3 are returned to Cobra within ten (10) days from the date on which DiPirro notifies Cobra of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Cobra that he is rescinding this Agreement pursuant to this Paragraph.

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

**9. Attorney's Fees.** Unless otherwise noted, in the event that a dispute arises with respect to any provision(s) of this Agreement (including, but not limited to, disputes arising from the payments to be made under this Agreement), the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

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

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

Gregory M. Sheffer  
Sheffer & Chanler

4400 Keller Ave., Suite 200  
Oakland, CA 94605  
(510) 577-0747

All correspondence to Cobra shall be mailed to:

Jean Piette  
Ogilvy Renault  
500 Grande Allee est, Suite 520  
Quebec, Quebec, Canada G1R 2J7  
(418) 640-5000

**13. 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 Motion to Approve hearing. Counsel for DiPirro shall submit the Agreement to the Court in accordance with the requirements of Health & Safety Code §25249.7(f) and its implementing regulations, thereby allowing the Attorney General to serve any comments to this Agreement as provided by law.

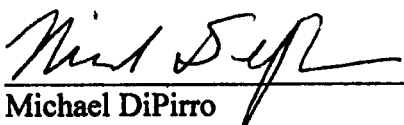
**14. Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**15. 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:**

DATE: 5/14/02

  
\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Sheffer  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
COBRA ANCHORS CORP.  
DEFENDANT

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Jean Piette  
Attorneys for Defendant  
COBRA ANCHORS CORP.

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

**APPROVED AS TO FORM:**

DATE: May 14 2002

\_\_\_\_\_  
Gregory M. Sheffer  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
COBRA ANCHORS CORP.  
DEFENDANT

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Jean Piette  
Attorneys for Defendant  
COBRA ANCHORS CORP.

**SETTLEMENT AGREEMENT**

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Sheffer  
Attorneys for Plaintiff  
MICHAEL DIPIRRO


**AGREED TO:**

DATE: MAY 13, 2002

  
\_\_\_\_\_  
COBRA ANCHORS CORP.  
DEFENDANT

**APPROVED AS TO FORM:**

DATE: May 14, 2002

  
\_\_\_\_\_  
Jean Piette  
Attorneys for Defendant  
COBRA ANCHORS CORP.

SETTLEMENT AGREEMENT

**EXHIBIT A**

**Lead anchors and kits containing lead anchors.**