

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Michael DiPirro, a California citizen, and Enco Manufacturing, Inc., a New York corporation and MSC Industrial Direct Co., Inc. a New York corporation (collectively “Enco”), as of November 3, 2000 (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 (or produced by) consumer and industrial products; and

B. Enco is a company that distributes and/or sells products in the State of California whose customary use and application are likely to produce dermal exposure, inhalation or ingestion of lead (or lead compounds) (the “Listed Chemical”); and

C. The products whose customary use and application are likely to produce dermal exposure, inhalation or ingestion of the Listed Chemical and which are covered by this Agreement are set forth in Exhibit A (the “Products”). Some of the Products have been distributed and/or sold by Enco for use in California since at least August 18, 1996; and

D. On August 18, 2000, Michael DiPirro served Enco and other public enforcement agencies with a document entitled “60-Day Notice of Violation” which provided Enco and such public enforcers with notice that Enco 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 Proposition 65-listed chemicals; and

E. Enco denies the material factual and legal allegations contained in the 60-Day Notice of Violation. Nothing in this Agreement shall be construed as an admission by Enco 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 Enco 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 Enco under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND ENCO AGREE AS FOLLOWS:

1. **Product Warning.** Beginning immediately, Enco shall initiate efforts to revise its current product or packaging labels for the Products sold by Enco consistent with this Agreement (“Revised Labels”). Enco shall further immediately initiate efforts to revise its current information accompanying Products shipped to consumers in California consistent with this Agreement (“Revised Insert Information”). Enco agrees to use reasonable efforts to ensure that all Products in its possession intended for distribution or sale in California are packaged or

sold using Revised Labels or Revised Insert Information as soon as commercially reasonable. Enco agrees that no later than four months after the Effective Date of this Agreement, it shall not distribute or sell (or cause to be distributed or sold on its behalf) any of the Products for sale or use in the State of California unless each such Product is accompanied by a Revised Label on or affixed to the Product or its packaging or accompanied by Revised Insert Information shipped with the Product, with the following statement:

For all Products containing lead (and lead compounds) such Products shall bear the following warning statement on the Revised Label or on the Revised Insert Information:

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

or

“WARNING: This product contains a chemical 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. For the purpose of complying with this Paragraph, the above warning may be communicated by the placement of adhesive stickers onto the current Product packaging.

1.1 Warning Labels For Products “In Commerce.” The parties agree and acknowledge that an unknown volume of Products were introduced into the “stream of commerce” before the Effective Date of this Agreement. In an effort to reasonably ensure that persons who might use or be exposed to the Listed Chemical in or from these “in commerce” Products, Enco shall, within thirty (30) days from the Effective Date, provide Interim Warning Materials to its customers whom Enco knows or has reason to believe currently distribute or sell Products in California. Such “Interim Warning Materials” shall include the following: (a) a reasonably sufficient number of warning stickers (considering the potential volume of Products that the recipient distributes or sells in California); (b) a letter of instruction for the application of such warning stickers; and (c) a Notice and Acknowledgment form to be signed by the customer and returned to Enco.

1.2 New Products. Any products that are substantially similar to the Products, which contain or whose customary use and application are likely to produce dermal exposure, inhalation, or ingestion of the Listed Chemical, and which were not distributed and/or sold by Enco on or before the Effective Date shall be defined as “New Products.” Any such New Products distributed and/or sold by Enco after the Effective Date shall be deemed to comply with

this Agreement if their Revised Labels or Revised Insert Information comply with the requirements of Paragraph 1.

2. Payment Pursuant To Health & Safety Code §25249.7(b).

Pursuant to Health & Safety Code §25249.7(b), Enco shall pay a civil penalty of \$4,000 on or before December 15, 2000. However, the payment shall be waived if Enco provides to Michael DiPirro, on or before December 10, 2000, the results of a chemical analysis of an exemplar of each of the brass hammers it distributes for lead content which may lead to successful future enforcement actions under Health & Safety Code §25249.6. The penalty payments are to be made payable to “Chanler Law Group 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.

The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Enco then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

Enco shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Enco’s attention, and negotiating a settlement in the public interest. Enco shall pay the total sum of \$4,000 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the “Chanler Law Group.”

4. Michael DiPirro’s Release Of Enco.

Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, on whose behalf this action was brought, 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 Enco and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200, *et seq.* based on Enco’s failure to warn about exposure to the lead (or lead compounds) contained in (or produced by) any of the Products. It is specifically understood that Enco’s compliance with the terms of this Agreement resolves all issues, now and in the future, concerning the Enco Releasees’ past compliance with the requirements of Proposition 65, Business and Professions Code Section 17200, *et seq.*, or any other claims arising from Enco’s alleged failure to comply with Proposition 65 in connection with the Products occurring on or before the Effective Date.

5. Enco’s Release Of Michael DiPirro.

Enco, by this Agreement, waives all rights to institute any form of legal action against Michael DiPirro and his attorneys or representatives, for all actions or statements made on or before the Effective Date by Michael

DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §17200, *et seq.* against Enco.

6. Enco Sales Data. Enco understands that the sales data provided to counsel for DiPirro by Enco 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 Enco's knowledge, the sales data provided are true and accurate. In the event that DiPirro discovers, within two years after the Effective Date, facts which demonstrate to a reasonable degree of certainty that the sales data are materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Enco'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 Enco, provided that all sums paid by Enco pursuant to paragraphs 2 and 3 are returned to Enco within ten (10) days from the date on which DiPirro notifies Enco 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 Enco that he is rescinding this Agreement pursuant to this Paragraph.

7. Product Characterization. Enco acknowledges that each of the Products listed in Exhibit A contains, or in the customary use or application of the Products is likely to expose users to, lead (or lead compounds), a substance known to the State of California to cause cancer and reproductive harm. In the event that Enco obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products 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), Enco shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of Enco's Exposure Data, DiPirro shall provide Enco with written notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a challenge). If DiPirro fails to provide Enco with written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Enco's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Enco shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Enco of his intent to challenge the Exposure Data, DiPirro and Enco shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Enco's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Enco agree to submit such challenge to the Superior Court for determination. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion brought under this paragraph to the court for determination.

8. 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.

9. Attorney's 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.

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:

Hudson Bair, Esq.
Kapsack & Bair, LLP
1440 Broadway, Suite 610
Oakland, CA 94612
(510) 645-0027

or

Clifford A. Chanler, Esq.
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(203) 966-9911

All correspondence to Enco shall be mailed to:

Christopher G. Foster, Esq.
Law Offices of Smiland & Khachigian
601 West Fifth Street, 7th Floor
Los Angeles, CA 90071-2004
(213) 891-1010

Either party may, from time to time, specify a change of address to which all notices and other communications shall be sent.

12. Entire Agreement, Modification Of The Agreement. This Agreement, together with the exhibits which are specifically incorporated herein by this reference, constitutes the entire agreement between the parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the parties. This Agreement may be modified only upon the written agreement of the parties.

13. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available.

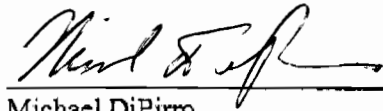
Enco represents, however, that their counsel will send a copy of this Agreement to the California Attorney General's Office.

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: 11/08/00


Michael DiPirro

AGREED TO:

DATE: _____

Enco Manufacturing, Inc.

DATE: _____

MSC Industrial Direct Co.

between the parties. This Agreement may be modified only upon the written agreement of the parties.

13. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Enco represents, however, that their counsel will send a copy of this Agreement to the California Attorney General's Office.

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.

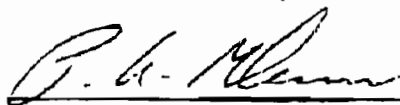
AGREED TO:

DATE: _____

Michael DiPirro

AGREED TO:

DATE: 11-27-00



Enco Manufacturing, Inc.

DATE: 11-27-00



MSC Industrial Direct Co.

EXHIBIT “A”

1. Non-Marring Hammers
(such as Cook Brand Soft Alloy Hammers)
2. Brass Hammers
(containing lead)