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8 Attorneys for Plaintiff
9 AS YOU SOW

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

12 AS YOU SOW, a non-profit) No. 971038
13 organization,)
14 Plaintiff,)
15 v.) STIPULATION FOR
16) ENTRY OF JUDGMENT
17 GACO WESTERN, INC. and DOES 1)
18 through 1000,)
19 Defendants)

20 IT IS HEREBY STIPULATED, by and between plaintiff As
21 You Sow and defendant Gaco Western, Inc., through their
22 respective representatives, that judgment in the above-
23 entitled action be entered in accordance with the terms of the
24 settlement agreement between the parties which is attached
25 hereto.

26 Dated: September 17, 1995

27 by: Hernan G. Sanhueza
28 Attorney for Plaintiff
AS YOU SOW

Dated: September 29, 1995

by: Christopher W. Sheron
Attorney For Defendant
GACO WESTERN, INC.

SETTLEMENT AGREEMENT

On September 22, 1995 in San Francisco, California, **As You Sow ("AYS")** and **Gaco Western, Inc. ("Gaco")** agreed to the following terms and conditions:

WHEREAS:

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

Gaco is a company that currently manufactures and distributes waterproofing materials, neoprenes, polyurethane foams, adhesives, accelerators, paints, dyes, coatings, elastomeric coatings, and other special-use products; and

On January 1, 1991, toluene was officially listed by the State of California as a chemical known to cause birth defects or other reproductive harm, pursuant to Health & Safety Code §25249.8; and

On October 1, 1992, lead oxide was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

A list of the products which contain toluene and/or lead oxide and which are covered by this Agreement is provided in Exhibit "A" (the "Products"). The Products containing toluene have been manufactured by Gaco for sale and/or use in California since January 1, 1992, and the products containing lead oxide have been manufactured by Gaco for sale and/or use in California since October 1, 1993; and

On or about January 9, 1995, AYS served Gaco with a document entitled "60-Day Notice" which provided Gaco with notice that it was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to toluene, a reproductive toxin and lead oxide, a carcinogen; and

On or about July 14, 1995, AYS served Gaco with a summons and complaint in the case of As You Sow v. Gaco Western, Inc., (Case No. 971038) which is currently pending in the San Francisco Superior Court.

In order to avoid costly and time consuming litigation, AYS and Gaco have agreed to settle all claims that have been brought or could have been brought against each other arising from the sale of the Gaco Products in California.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Product Labeling.** Beginning immediately, Gaco agrees that it will not knowingly and intentionally ship (or caused to be shipped) any Products containing toluene and/or lead oxide for sale in the state of California unless such Products bear the following warning statement on the Product's label:

For Products containing toluene:

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

For products containing lead oxide:

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

For products containing toluene and lead oxide:

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

This 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.

2. ^{DCBM} **Material Safety Data Sheet Revisions.** Gaco agrees to revise Section 4V, entitled "Health Hazard Data" on 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. An example of a revised MSDS is attached hereto as Exhibit "B".

3. **Distributor Letter.** In an effort to ensure that consumers receive Proposition 65 warnings for Products that have already been shipped for sale in California, Gaco agrees that within thirty (30) days from the date this agreement is executed, it shall provide to its California Distributors the letter attached as Exhibit "C" ("Distributor Letter").

3. **Interim Warning Stickers.** Gaco agrees to provide to each of its California Distributors, with the Distributor Letter referenced in Paragraph 2, above, with a sufficient number

of Warning Stickers. These Warning Stickers shall bear the warning language contained in Paragraph 1, above.

4. **Payment Under This Agreement.** Gaco Agrees to Pay to AYS the sum of \$5,500 as full settlement of this matter. The restitutionary component of this payment shall be allocated between Citizens for a Better Environment, a non-profit organization educating California citizens about the dangers of toxic chemicals in the environment, and AYS' Proposition 65 Fund. The Cost component of this payment shall be used by AYS to defray its investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Gaco's attention and negotiating a settlement in the public interest. Payment of this sum shall be made as follows:

- (a) \$1,000 within three days of execution of this Agreement;
- (b) \$1,000 per month on or before the first day of each of the three calendar months following the date of execution of this Agreement; and
- (c) \$1,500 final payment on or before the first day of January, 1996.

Gaco shall include a "late fee" of \$250.00 per month for each installment which is paid late under the payment schedule referenced in paragraph 4(a), (b) and (c).

7. **AYS Release.** AYS, by this Agreement, waives all rights to institute an action against Gaco, its distributors or retailers which sell Gaco's Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim based on Gaco's failure to warn consumers about exposure to toluene and/or lead oxide from any of the Products identified in Exhibit "A".

8. **Gaco Release.** Gaco, by this Agreement, and subject to the Confidentiality Agreement attached hereto as Exhibit "D", waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys and representatives (the "AYS Releasees") based on all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 against Gaco.

9. **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.

10. **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.

11. **Disputes Under This Agreement.** 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.

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

13. **Correspondence.** All correspondence to AYS shall be mailed to:

Hernan G. Sanhueza, Esq.
Chanler & Associates
1700 Montgomery Street, 3rd Floor
San Francisco, CA 94111

All correspondence to Gaco shall be mailed to:

Peter Davis, President
Gaco Western, Inc.
P.O. Box 88698
Seattle, WA 98138-2698

14. **No Admissions.** Nothing in this Agreement shall be construed as an admission by Gaco 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 Gaco 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 Gaco under this Agreement.

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:

By: Tomad Macke
As You Sow

Dated: 11/6/95

AGREED TO:

By: [Signature]
Gaco Western, Inc.

Dated: 9/25/95

EXHIBIT A

1. N1700
2. N1229
3. N1207
4. N1239
5. N1411
6. UA 60
7. UA 61
8. UB 64

EXHIBIT B

[Gaco's revised MSDS here]

Revised 9/95

MATERIAL SAFETY DATA SHEET

Replaces 5/93

18700 S. Center Parkway
Tukwila, WA. 98188
(206) 575-0450

Gaco Western, Inc.

521 Biddle Street
Waukesha, WI. 53186
(414) 542-8072

UA-60/61 Part A

CHEMICAL FAMILY: Aliphatic Polyurethane

TRADE NAME: Gacoflex

TRANSPORTATION EMERGENCY ASSISTANCE / CALL CHEMTREC / 800-424-9300

NFPA HAZARD RATINGS

H - 2

F - 3

R - 0

PP - I

DEGREE OF HAZARD: 4=EXTREME 3=HIGH 2=MODERATE 1=SLIGHT 0=INSIGNIFICANT

SECTION II - HAZARDOUS SUBSTANCES

	% BY WT	OSHA TWA	OSHA STEL
Toluene ⁽¹⁾⁽²⁾ CAS# 108-88-3	13.5 +/- 0.3	100ppm	150ppm
Methyl ethyl ketone ⁽¹⁾ CAS# 78-93-3	12.0 +/- 0.3	200ppm	300ppm

(1) This chemical is subject to SARA Title III, Section 313 Reporting

(2) California Proposition 65 listed chemical-See Section V

SECTION III - PHYSICAL DATA

BOILING RANGE: 172-233 Deg. F WEIGHT PER GALLON: 12.5 +/- 0.5 Lbs
APOR DENSITY(air=1): Heavier VAPOR PRESSURE (mm Hg @ 20C/68F):
% VOLATILE BY VOLUME: 46.8 +/- 0.5% Toluene: 22.0
EVAPORATION RATE(ether=1): Slower Methyl ethyl ketone: 70.0

SECTION IV - FIRE & EXPLOSION HAZARD DATA

FLASH POINT: 20 Deg F. (TCC) LEL - 1.0 %
EXTINGUISHING MEDIA: Foam, CO2, dry chemical or water fog.
SPECIAL FIRE FIGHTING PROCEDURES: Cool containers with water fog to prevent rupture. Boilover may occur when temperature of material approaches boiling point of solvent. Do not extinguish flame at leak because possibility of uncontrolled explosive reignition exists. Cut off fuel and/or allow fire to burn out. Extinguish residual fires with chemical powder or foam.
UNUSUAL FIRE & EXPLOSION HAZARD: Spills or vapor leaks readily form flammable mixtures at or above the flash point. It is unlikely that this product will explode due to mechanical impact but fire or explosion may occur from static accumulation and discharge.

SECTION V - HEALTH HAZARD DATA

EFFECTS OF OVEREXPOSURE: Inhalation of high concentrations can produce central nervous system depression. Skin contact can cause severe irritation, possible burns, defatting and dermatitis. Eye contact causes severe irritation, redness, tearing and blurred vision.

WARNING!: THIS PRODUCT CONTAINS TOLUENE, A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM.

EMERGENCY & FIRST AID: If overcome by vapors, remove to fresh air and if breathing has stopped, give artificial respiration. Eye contact: Flush immediately with water and call a physician as soon as possible. Skin contact: Wash with soap and water and remove contaminated clothing. Ingestion: See a physician as soon as possible.

PRIMARY ROUTES OF ENTRY: Dermal or inhalation most likely.

MEDICAL CONDITIONS PRONE TO AGGRAVATION BY EXPOSURE: Repeated exposure can cause allergic reaction with development of occupational asthma. Long term exposure to low vapor concentrations may cause chronically progressive pulmonary disease. Repeated skin contact can result in sensitization.

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SECTION VI - REACTIVITY DATA
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STABILITY: Stable

CONDITIONS TO AVOID: Heat, sparks and open flame

INCOMPATIBILITY: Avoid strong oxidizing materials like liquid chlorine and concentrated oxygen.

HAZARDOUS DECOMPOSITION PRODUCTS: Incomplete burning may produce carbon monoxide and/or carbon dioxide.

HAZARDOUS POLYMERIZATION: Will not occur.

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SECTION VII - SPILL OR LEAK PROCEDURES
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STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED: Remove all sources of ignition. Keep people away. Avoid breathing vapors. Recover free liquid and add absorbent to remainder of spill before collecting with non-sparking tools.

WASTE DISPOSAL METHOD: Dispose in accordance with local, state, and federal regulations.

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SECTION VIII - SPECIAL PROTECTION INFORMATION
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RESPIRATORY PROTECTION: Use organic vapor cannisters for low concentrations. Use self-contained breathing apparatus in enclosed areas involving higher vapor concentrations.

VENTILATION(Local Exhaust/Mechanical): Explosion proof mechanical equipment capable of keeping vapor concentration below the TLV.

PROTECTIVE GLOVES: Chemical resistant plastic or rubber gloves.

EYE PROTECTION: Safety goggles or face shield.

OTHER PROTECTIVE EQUIPMENT: Eye bath & safety shower should be available.

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SECTION IX - SPECIAL PRECAUTIONS & TOXICOLOGICAL PROPERTIES
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SPECIAL PRECAUTIONS TO BE TAKEN IN HANDLING & STORING: Keep containers closed and store in a cool dry place with adequate explosion proof ventilation. Keep away from heat, sparks and open flame. Ground equipment to prevent accumulation of static charge.

TOXICOLOGICAL PROPERTIES: Solvents contained may be harmful or fatal if swallowed. Vapor harmful. May cause skin or eye irritation.

KEEP OUT OF THE REACH OF CHILDREN.

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This information is furnished without warranty, representation, inducement, or license of any kind, expressed or implied, including any implied warranty of merchantability or of fitness for a particular purpose, except that it is accurate to the best of Gaco Western's knowledge or obtained from sources believed to be accurate. Gaco Western Inc. does not assume any legal responsibility for use or reliance upon same. It is the user's obligation to determine the conditions of safe use of this product.
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EXHIBIT C

[Gaco Letterhead]

IMPORTANT LEGAL NOTICE

Date:
Attention: Gaco Western, Inc. Distributors
Subject: California Proposition 65 Warnings
for Products Containing Toluene and/or
Lead oxide

This letter is to advise you that the Gaco Western, Inc. products listed in Attachment A to this letter contain TOLUENE, a chemical known to the State of California to cause birth defects or other reproductive harm, and/or LEAD OXIDE, a chemical known to the State of California to cause cancer. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), the purchasers of the products listed on Attachment A must be given clear and reasonable warning of toluene's reproductive harm and of lead oxide's carcinogenicity.

Gaco has begun labelling the products with proper warnings, however some of these products may have entered the chain of distribution prior to Gaco's label change. In order to provide the required warnings for any such products, you must take certain actions to ensure that purchasers of those products receive Proposition 65 warnings.

You will be in compliance with Proposition 65 for the products listed on Attachment A if you attach one of the enclosed Warning Stickers to all of these products not bearing a Proposition 65 warning.

Failure to attach these Warning Stickers to a product lacking the above warning may result in a violation of Proposition 65 and may subject you to legal action by various environmental groups or the California Attorney General, 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 me at (206) 575-0450 by phone, or by mail at the above address. In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

EXHIBIT D

[Copy of confidentiality agreement here]

CONFIDENTIALITY AGREEMENT

AS YOU SOW ("AYS") has requested financial information from, and is engaged in settlement discussions with GACO WESTERN, INC. ("GACO"). AYS and GACO agree to treat all financial information concerning GACO which is furnished by or on behalf of GACO, as well as the content of all discussions and communications concerning a settlement of this matter (herein collectively referred to as the "Confidential Information"), in accordance with the provisions of this agreement, and to take or abstain from taking certain other actions herein set forth. The term "Confidential Information" does not include information which (i) was already in AYS' possession without obligation of confidentiality prior to AYS' receiving it from GACO; (ii) is or becomes generally available to the public other than as a result of a disclosure by AYS or its directors, officers, employees, agents or advisors; (iii) is or becomes generally available to the public other than as a result of disclosure by GACO; or (iv) becomes available to AYS in the course of discovery in this action.

AYS agrees that the Confidential Information will be used solely for the purposes of evaluating GACO's financial condition and negotiating a settlement of the instant dispute, and that such information will be kept confidential by AYS and its advisors; provided, however, that any of such information may be disclosed to AYS' advisors who need to know such information for said purposes (it being understood that such directors, officers, employees and representatives shall be informed by AYS of the confidential nature of such information and shall be directed by AYS to treat such information confidentially.) A copy of this Confidentiality Agreement shall be attached to the Confidential Information, and each recipient shall acknowledge that s/he has received and reviewed the Confidentiality Agreement.

Upon request of GACO, and within a reasonable time not to exceed 30 days thereafter, AYS shall redeliver to GACO all written Confidential Information and any other written material containing or reflecting any information in the Confidential Information whether conveyed orally or in writing or prepared by GACO, its advisors or otherwise and will not retain any copies, extracts or other reproductions in whole or in part of such written material. All documents, memoranda, notes and other writings whatsoever prepared by AYS or AYS' advisors based on the information in the Confidential information shall be destroyed.

This agreement maybe modified or waived only by a separate writing by GACO and AYS expressly so modifying or waiving all or a specific portion of this agreement.

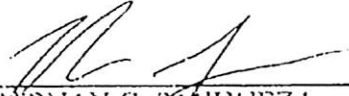
Attorneys' Fees

In the event of legal action to enforce this agreement, the prevailing party shall be entitled to reasonable attorneys' fees.

This agreement is entered into as of this _____ day of _____, 1995.

AS YOU SOW

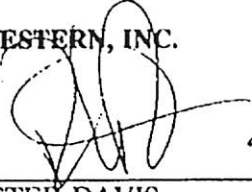
By:


HERNAN G. SANHUEZA
CHANLER & ASSOCIATES
Attorneys for *AS YOU SOW*

7/28/95

GACO WESTERN, INC.

By:


PETER DAVIS

7/13/95

Title: Owner / DIRECTOR