

1 Clifford A. Chanler, State Bar No. 135534  
2 Mark Todres, State Bar No. 168389  
3 CHANLER & ASSOCIATES  
4 1700 Montgomery Street, Suite 110  
5 San Francisco, CA 94111  
6 (415) 391-1122

7 Attorneys for Plaintiff  
8 AS YOU SOW

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

11 AS YOU SOW, a non-profit  
12 corporation,

13 Plaintiff,

14 v.

15 GOUGEON BROTHERS, INC.,  
16 et al.,

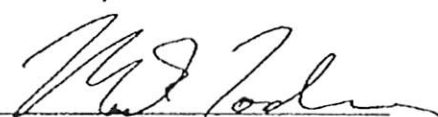
17 Defendants.

No. 969468

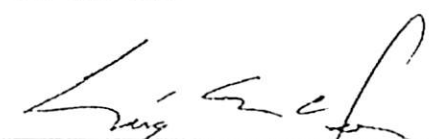
STIPULATION FOR ENTRY OF  
JUDGMENT

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

24 Dated: May 19, 1995

25 by:   
26 Mark Todres  
27 Attorneys for Plaintiff  
28 AS YOU SOW

29 Dated: May 12, 1995

30 by:   
31 Craig W. Horn  
32 Attorney For Defendant  
33 GOUGEON BROTHERS, INC.

# **Exhibit A**

SETTLEMENT AGREEMENT

On May \_\_, 1995 in San Francisco, California, As You Sow ("AYS") and Gougeon Brothers, Inc. ("Gougeon") 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 improving human health; and

Gougeon is a <sup>MICHIGAN</sup> Delaware company that currently manufactures and distributes boat repair and coating products, some of which contain methylene chloride and/or perchloroethylene; and

On April 1, 1988, perchloroethylene and methylene chloride were officially listed by the State of California as chemicals known to cause cancer, pursuant to Health & Safety Code §25249.8; and

A list of the boat repair and coating products containing methylene chloride and/or perchloroethylene which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured by Gougeon for distribution in California, and sold in California retail stores since April 1, 1989; and

On October 14, 1994, AYS served Gougeon with a document entitled "60-Day Notice" which provided Gougeon with notice that it 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

On May \_\_, 1995, AYS filed a complaint entitled As You Sow v. Gougeon Brothers, Inc., et al. (No. 94468) in San Francisco Superior Court alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly are exposed to Proposition 65-listed chemicals in certain Gougeon products; and

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Gougeon agrees that as of December 1, 1994, it shall not ship (or cause to be shipped) any of the Products for sale or use in the State of California unless each such product contains the following warning statement on its label:

**"WARNING: This product contains Methylene Chloride and Perchloroethylene, chemicals known to the State of California to cause cancer."**

This warning statement shall have a line border around it and 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 label attached hereto as Exhibit B satisfies this requirement.

2. Gougeon agrees that within thirty (30) days from the date this agreement is executed, it shall provide the following warning materials to its customers that Gougeon 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 labelled pursuant to paragraph 1: (a) at least 100 warning stickers; (b) a notice letter providing instructions for the placement of the stickers; and (c) a Notice and Acknowledgment postcard. The stickers shall be printed in black ink on a white background, be at least 5 cm by 2 cm, and display the following statement:

**"WARNING: This product contains Methylene Chloride and Perchloroethylene, chemicals known to the State of California to cause cancer."**

The notice letter is attached hereto as Exhibit C. The Notice and Acknowledgment postcard is attached hereto as Exhibit D. After 15 days, if a retailer has not returned the Notice and Acknowledgment postcard, Gougeon shall suspend shipments of the Products to such retailer until such retailer agrees to place the stickers on the Products.

3. At the time this Agreement is executed, Gougeon shall pay to AYS \$3500 in restitution and costs. The restitutionary component of this payment, which is made pursuant to Business & Professions Code §17203, shall be made to the Rainforest Action Network, a public interest group dedicated to saving rainforests from destruction. The cost component of this payment will be used by AYS to help defray its investigation fees and costs, expert fees, reasonable attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Gougeon's attention and negotiating a settlement in the public interest.

4. AYS, by this Agreement, waives all rights to institute action against Gougeon, its distributors or retailers which sell Gougeon's Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute

or common law claim based on Gougeon's failure to warn consumers about exposure to methylene chloride and/or perchloroethylene from any of the Products identified in Exhibit A.

5. Gougeon, 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") based on any statute or provision of common law and for all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 against Gougeon.

6. 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.

7. 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.

8. 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.

9. The terms of this Agreement shall be governed by the laws of the State of California.

10. All correspondence to AYS shall be mailed to:

Mark Todres, Esq.  
Chanler & Associates  
1700 Montgomery Street, 3rd Floor  
San Francisco, CA 94111

All correspondence to Gougeon shall be mailed to:

Glenn House  
Gougeon Brothers, Inc.  
100 Patterson Ave.  
P.O. Box 908  
Bay City, MI 48707

11. Nothing in this Agreement shall be construed as an admission by Gougeon 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 Gougeon 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 Gougeon under this Agreement.

12. 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: \_\_\_\_\_

*Senay Ay?*  
As You Sow

Dated: \_\_\_\_\_

*5/22/95*

AGREED TO:

By: \_\_\_\_\_

*Robert H. Morrie*  
Gougeon Brothers, Inc.

Dated: \_\_\_\_\_

EXHIBIT A

1. West System 850 Solvent

EXHIBIT B  
[Exemplar of New Label]



EXHIBIT C

[Gougeon Letterhead]

IMPORTANT LEGAL NOTICE

Date:

Attention: Retailers of Gougeon Products

Subject: California Proposition 65 Warnings  
for Products Containing Methylene Chloride and  
Perchloroethylene

\*\*\*\*\*

This letter is to advise you that the Gougeon Company products listed in Attachment A to this letter expose users of those products to METHYLENE CHLORIDE and PERCHLOROETHYLENE, chemicals known to the State of California to cause cancer. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") [and by Court Order], the purchasers of the products listed on Attachment A must be given clear and reasonable warning of methylene chloride and perchloroethylene's carcinogenicity.

Although Gougeon Brothers, Inc. intends to begin labelling the listed products with proper warnings, it has not yet done so. Until the labelling change is made, you must take certain actions to ensure that purchasers of the products receive Proposition 65 warnings.

You will be in compliance with Proposition 65 for the products listed on Attachment A if you affix the enclosed warning stickers to the products in the manner described below. The following materials will enable you to provide warnings in compliance with the law:

- (1) One hundred (100) Warning Stickers; and
- (2) A return postcard indicating that you have received the enclosed materials and will comply with the warning requirements of Proposition 65 for the listed products.

You should affix a warning sticker to the 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 various environmental groups or the California Attorney General, wherein monetary penalties of up to \$2,500 per violation could be sought.

You should return the enclosed postcard affirming your compliance with Proposition 65's warning requirements for the listed products. If, within 15 days of mailing, we do not receive the return post card with your signature indicating that you have received the enclosed materials and are prepared to provide the required Proposition 65 warning, we will stop supplying you with any of the products on the enclosed list until such time as you will agree in writing to provide the required warning or until the products have been labeled by us with the proper warnings.

Should you have any questions or concerns about this matter, please do not hesitate to contact \_\_\_\_\_ at 1-800-XXX-XXXX by phone, or by mail at the above address. In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

Title \_\_\_\_\_

EXHIBIT D

RETURN POSTCARD FROM RETAILERS

\* \* \* \*

The undersigned certifies that this retailer has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements, (b) the list of Gougeon Brothers, Inc. products requiring a warning, and (c) 100 warning stickers. The undersigned further certifies that this retailer will comply with Proposition 65 warning requirements by affixing the warning stickers provided to them in the manner directed.

\_\_\_\_\_  
[Name & Title]

\_\_\_\_\_  
[Retail Store Name]

\_\_\_\_\_  
[Address]

Please send me \_\_\_\_\_ additional stickers.