

6

1 Clifford A. Chanler, State Bar No. 135534
Eric S. Somers, State Bar No. 139050
2 CHANLER & SOMERS
Suite 110
3 1700 Montgomery Street
San Francisco, CA 94111
4 Tel: (415) 391-1122
Fax: (415) 391-1157
5

FILED
SAN MATEO COUNTY

FEB 23 1996

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

6 Attorneys for Plaintiff
AS YOU SOW
7

DATE SIGNED _____
DATE SUBMITTED _____
FOR PROCESSING FEB 23 1996

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN MATEO

10
11 AS YOU SOW, a non-profit corporation,)

Case No. 393980

14 -

12 Plaintiff)

STIPULATION FOR ENTRY OF
JUDGMENT AND JUDGMENT ON
STIPULATION

13 v.)

14 HYSAN CORPORATION, and DOES 1)
15 through 1000,)


16 Defendants.)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

393980
02-26-1996/02:27 PM
\$14.00/03-37126

1 IT IS HEREBY STIPULATED, by and between plaintiff As
2 You Sow and defendant Hysan Corporation, through their
3 respective representatives, that judgment in the above-
4 entitled action be entered in accordance with the terms of the
5 settlement agreement between the parties, which is attached
6 hereto as Exhibit A.

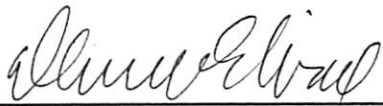
7
8
9 Dated: January 31, 1996

by:


Eric S. Somers
Attorneys for Plaintiff
AS YOU SOW


10
11
12
13 Dated: January 22, 1996

by:


Daniel E. Wax
Attorneys for Defendant
Hysan Corporation

14
15
16 IT IS HEREBY ORDERED that judgment be entered in
17 accordance with the terms of the stipulation between the
18 parties.

19
20
21 Dated: FEB 20 1996



Judge of the Superior Court

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into by and between As You Sow, a California nonprofit corporation ("AYS") and Hysan Corporation, an Illinois corporation ("HYSAN") as of January 25, 1996 (the "Effective Date").

WHEREAS:

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

HYSAN is a corporation that manufactures and distributes various products in the State of California that contain the following chemicals listed pursuant to Proposition 65: toluene and trichloroethylene; and

A list of the products that contain one or more of the chemicals listed above which are covered by this Agreement is provided in Exhibit A (the "Products"); and

The Products have been distributed and sold by HYSAN for use in California since April 1, 1989; and

On June 12, 1995, AYS first served HYSAN and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided HYSAN and such public enforcers with notice that HYSAN 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;

On October 6, 1995, AYS filed a complaint entitled As You Sow v. Hysan Corporation, et al. (No. 393980) in the San Mateo Superior Court, naming HYSAN as a defendant and alleging violations of Business & Professions Code §24249.6 on behalf of individuals in California who allegedly are exposed to chemicals listed pursuant to Proposition 65 contained in certain HYSAN products.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Product Labeling.** Beginning immediately, HYSAN shall initiate revisions to its current labels for the Products. HYSAN shall use its best efforts to ensure that all Products are relabeled as quickly as possible, however, HYSAN agrees that as of February 29, 1996, it shall not ship (or cause to be shipped) any of the Products for sale or use into the State of California

unless each such Product contains the appropriate warning statement on its label as follows:

- 1.1. For Products containing a chemical listed by the State of California as known to cause birth defects or other reproductive harm:

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

- 1.2. For Products containing a chemical listed by the State of California as known to cause cancer:

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

- 1.3. For Products containing any combination of chemicals listed by the State of California as known to cause cancer and known to cause birth defects or other reproductive harm:

"WARNING: This product contains chemicals 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. The parties agree that the sample label attached hereto as Exhibit B satisfies this requirement.

2. Warnings For Products in Commerce. HYSAN agrees that within thirty (30) days from the Effective Date, it shall provide warning materials by certified mail to the customers that HYSAN 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 labeled in accordance with Section 1. Such warning materials shall include a reasonably sufficient number of warning stickers (considering the size of each particular customer and the amount of Products each customer has purchased), a letter of instruction for the placement of the stickers, and a Notice and Acknowledgement postcard. A sample of these materials is attached hereto as Exhibit C.

3. Restitution. HYSAN agrees to pay \$2,100 to AYS on the Effective Date as restitution. This payment, which is made pursuant to Business & Professions Code §17203, shall be

forwarded by AYS to the Committee to Bridge the Gap ("CBG") and the AYS Proposition 65 Investigation Fund (the "Investigation Fund"). CBG is a public interest group challenging the siting of a nuclear waste disposal facility proposed for Ward Valley, California. The Investigation Fund supports research and investigation regarding the exposure of California citizens to chemicals listed pursuant to Proposition 65.

4. Reimbursement of Fees and Costs. HYSAN agrees to reimburse AYS for its investigation fees and costs, expert fees, reasonable attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to HYSAN's attention, litigating and negotiating a settlement in the public interest. On the Effective Date, HYSAN shall pay AYS \$6,900 as reimbursement of its fees and costs.

5. AYS Release. AYS, by this Agreement, waives all rights to institute action against HYSAN, its distributors, customers, officers and principals whether under Proposition 65 or Business & Professions Code §§17200 et seq., based on HYSAN's failure to warn about exposure to Proposition 65-listed chemicals contained in any of the Products manufactured on or prior to the date of this Agreement.

6. HYSAN Release. HYSAN, 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") for all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 et seq. against HYSAN on or prior to the date of this Agreement.

7. MSDS Revisions. HYSAN shall ensure that the Material Safety Data Sheets ("MSDS") for each of the Products contains a warning that will be consistent in wording with the on-label warning language required by Section 1. Final MSDSs incorporating the revised warning language will begin to be distributed in the normal course of business on or before February 29, 1996.

8. Representations and Warranties. The parties make the following representations and warranties:

8.1. HYSAN represents and warrants as follows:

8.1.1. Each of the Products listed in Exhibit "A" contains one or more substances known to the state of California to cause cancer or birth defects or other reproductive toxicity, and that HYSAN has no analytical, risk assessment, or other data indicating that an exposure to any Products listed in Exhibit "A" 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).

8.1.2. In the event that HYSAN obtains analytical, risk assessment, or other data that shows that an exposure to any Products listed in Exhibit "A" 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), HYSAN shall provide AYS with sixty (60) days prior written notice of its intent to limit or eliminate the warning provisions under Section 1 and shall provide AYS with all such supporting data. Within twenty (20) days of receipt of HYSAN's exposure data, AYS shall provide HYSAN with written notice of its desire to challenge the data (in the event that AYS chooses to make such a challenge), and AYS and HYSAN shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within twenty (20) days of mailing by AYS of such notice to challenge, AYS and HYSAN agree to submit such challenge to binding arbitration, with an arbitrator acceptable to both parties. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such an arbitration. If AYS does not challenge HYSAN's notice or the arbitrator determines that no warning is required for a particular Product or Products, HYSAN shall no longer be required to provide the warnings described in Section 1 of this Agreement for those Products.

8.1.3. HYSAN represents that the sales data provided by HYSAN was a material factor upon which AYS has relied to determine the amount of penalties and restitution in Sections 3 and 4 of this Agreement. HYSAN further represents that such sales data is true and accurate. HYSAN acknowledges that, in the event AYS finds that the sales data is materially inaccurate, all other parts of this Agreement notwithstanding, AYS will have the right to rescind this Agreement and re-institute an enforcement action against HYSAN. In such a case, all applicable statutes of limitation shall be deemed tolled for the period between October 8, 1995 and the date AYS notifies HYSAN that it is rescinding this Agreement pursuant to this subpart.

9. Stipulated Judgment. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the San Mateo 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. Change in Law. In the event that any law, rule regulation or final decision of any legislative, judicial or executive body with jurisdiction becomes effective or is entered, which renders the warnings agreed to under Section one (1) of this Agreement unnecessary or inappropriate to comply with applicable laws, HYSAN, at its option, may cease placing the

warnings required under Section one (1) on its labels and MSDSs; provided, however, that HYSAN shall continue to provide any warnings that continue to be required under other applicable laws, rules and regulations. HYSAN shall provide AYS thirty (30) days prior written notice of its intent to so limit the warning provisions under Section one (1) of this Agreement and shall provide AYS with a written explanation for the basis of its contention that any new or revised law, rule, regulation or final decision limits or otherwise renders inapplicable the warning provisions of Proposition 65. Notwithstanding the terms of this Section, AYS shall not be required under any circumstances to refund or return any amount paid pursuant to Sections two (2), three (3), and four (4) of this Agreement.

12. Attorneys' 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.

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

14. Notices. All correspondence to AYS shall be mailed to:

Eric S. Somers, Esq.
Chanler & Associates
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to HYSAN shall be mailed to:

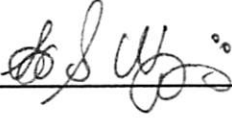
Stanley W. Landfair, Esq.
McKenna & Cuneo
444 South Flower Street, 8th Floor
Los Angeles, CA 90071-2909

15. No Admissions. Nothing in this Agreement shall be construed as an admission by HYSAN 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 HYSAN of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect the obligation, responsibilities, and duties of HYSAN under this Agreement.

16. 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:

AS YOU SOW

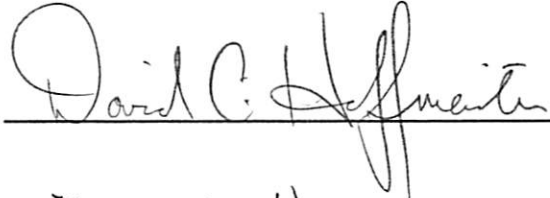


LISA S. WIGGINS
Printed Name

February 2, 1996
Date

AGREED TO:

HYSAN CORPORATION



DAVID C. HOFFMEISTER
Printed Name

1/30/96
Date

**EXHIBIT A
PRODUCTS COVERED**

<u>PRODUCT</u>	<u>NUMBER</u>
NAB II	71602
VANDALEX	82202
VANDALEX NOD	82502
HYDROBATE	52720
FYTE BLOC 20	44832
SAC II	70102
5 OZ ROUND PARA	44532
24 OZ OBLONG PARA	50030
4 OZ ROUND PARA	50430
SPIN	73020

EXHIBIT B

[Exemplary Label]

FEATURES, CLAIMS AND USES

Frees rusted and corroded nuts, bolts and fittings. Prevents corrosion. Penetrates and lubricates all surfaces. Dielectric Strength over 45,000 Volts/cm.

QUICKLY FREES: Pliers and Cutters; Nuts & Bolts; Machinery Linkages; Locks and Padlocks; Studs, Garden Tools; Muffler and Tail Pipe Clamps; Pillow Blocks; Srips and Sheers; Machine Screws; Pipe Joints; other Screwed Connections.

May be used effectively in garages, airports, factories, marinas, schools, shops, farms and homes.

Use to loosen and lubricate corroded, rusted and frozen parts. Prevents rust and protects all parts. Non-injurious to most basic metals, paints and woods. Protective coating will not burn unless heated well above room temperature. Can be used around most electric equipment.

May be used in food handling areas and food processing plants on equipment and machine parts in locations where there is no possibility of the lubricant or lubricated part contacting edible products.

DIRECTIONS FOR USE

Simply spray freely on frozen parts, tap joint lightly and allow a few seconds for penetration. Where corrosion is heavy, repeat the application.

ATTENTION: Do not gel product on worked-upon surfaces; they could become slippery, especially when wet. Do not allow product to contact solvent sensitive surfaces.

COMPOSITIONAL INFORMATION

Contains: Trichloroethylene (CAS# 79-07-6); Petroleum distillate (CAS# 64742-47-8); Carbon Dioxide (CAS# 124-38-9); Petroleum Oil (CAS# 64742-52-5); and Barium compounds (CAS# N/A).

PRECAUTIONS

WARNING: Use only as directed, in areas designed with enough ventilation to remove vapors, prevent vapor buildup and avoid exceeding exposure levels given in the Material Safety Data Sheet. Avoid breathing spray mist or vapors. Excessive inhalation may be anaesthetic and cause serious central nervous system depression, respiratory tract irritation, dizziness or drunkenness. In confined or poorly ventilated areas vapor can cause unconsciousness or death. If excessive inhalation occurs, move to fresh air, get medical attention, maintain respiration. Avoid eye contact and excessive skin contact. If in eyes, flush immediately with water. Remove any contact lenses, then hold eyelids open and continue flushing thoroughly.

Do not transport, use, store, or dispose of near flames, sparks, or other sources of heat or ignition. Containers exposed to direct sunlight or otherwise heated above 120°F (49°C) may burst. Store in a cool, dry area inaccessible to children. Do not puncture or incinerate container. For disposal, refasten protective cap on container and discard in trash.

Intentional misuse by deliberately concentrating and inhaling the contents is harmful and may be fatal. **KEEP OUT OF REACH OF CHILDREN.**

OSHA Workplaces: Also see the Material Safety Data Sheet for this product.

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



MANUFACTURED BY

Blue Island, IL
Houston, TX

60406
77019

0196

Made in U.S.A.

71602



NAB II Nut & Bolt Loosener Penetrant

Moisture/Corrosion Preventer



FOR INDUSTRIAL USE ONLY

- CONTAINS NO CFC'S OR OTHER OZONE DEPLETING SUBSTANCES.
- REPLACES WATER AND MOISTURE.
- PREVENTS CORROSION AND RUST.
- LUBRICATES AND PROTECTS.

WARNING:

HARMFUL IF INHALED.
EYES AND SKIN IRRITANT.
CONTENTS UNDER PRESSURE.
Before using, read carefully the complete PRECAUTIONS section on back panel.

NET WT 20 OZ
(1 LB 4 OZ) 567g

EXHIBIT C

[HYSAN Letterhead]

IMPORTANT LEGAL NOTICE

Date:

Attention: Customers of Hysan Corporation

Subject: California Proposition 65 Warnings

This letter is to advise you that the Hysan Corporation products listed in Attachment A to this letter expose users of those products to chemicals known to the State of California to cause cancer or birth defects (or other reproductive harm) or cancer and birth defects (or other reproductive harm). Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), the purchasers and users of the products listed on Attachment A must be given clear and reasonable warning that a particular product contains a carcinogen, a reproductive toxin or both.

Although Hysan Corporation has begun labeling the listed products with proper warnings, you may have in your possession certain products that were manufactured and distributed before the new labeling was implemented. Until those products have been sold, 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 the California Attorney General or various environmental groups, wherein monetary penalties could be sought.

You should return the enclosed postcard affirming your compliance with Proposition 65's warning requirements for the listed products.

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

RETURN POSTCARD FROM CUSTOMERS

* * * *

The undersigned certifies that this customer of <FULL COMPANY NAME> has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements, (b) the list of Hysan Corporation 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]

[Company]

[Address]

Please send me _____ additional stickers.