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6

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11 Attorneys for Defendant  
ILLINOIS TOOL WORKS INC.  
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH  
15 UNLIMITED CIVIL JURISDICTION  
16

17 MICHAEL DIPIRRO, ) No. 01-033215  
18 )  
18 Plaintiff, )  
19 )  
19 v. ) SETTLEMENT AGREEMENT  
20 )  
20 ILLINOIS TOOL WORKS, INC.; and )  
21 )  
21 DOES 1 through 1000, )  
22 )  
22 Defendants. )  
\_\_\_\_\_ )

23 This Settlement Agreement ("Agreement" or "Consent  
24 Judgment") is entered into by and between Michael DiPirro and  
25 Illinois Tool Works Inc., a Delaware corporation ("ITW"), as  
26 of August 14, 2002 (the "Effective Date"). The parties agree  
27 to the following terms and conditions:  
28

1 **WHEREAS:**

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

7           B. ITW is a company that currently manufactures  
8 and distributes certain staining colors and fluids that  
9 contain lead (or lead compounds) and/or toluene, hazardous  
10 substances which, among other things, are known to the State  
11 of California to cause cancer and birth defects (or other  
12 reproductive harm);

13           C. A list of the products which contain lead (or  
14 lead compounds) and toluene (the "Listed Chemicals") and which  
15 are covered by this Agreement is provided in Exhibit A (the  
16 "Products"). The Products have been manufactured and  
17 distributed by ITW in California since December 6, 1998;

18           D. Since May 2000, ITW asserts that it has not  
19 knowingly manufactured and shipped for distribution any  
20 Products containing the Listed Chemicals for sale in the State  
21 of California without the following warning statement:

22                   **"WARNING: This product contains a chemical(s)  
23                   known to the State of California to cause  
24                   cancer and birth defects or other reproductive  
25                   harm."**

26           E. ITW has exchanged sales data with counsel for  
27 DiPirro for the Products, and will provide a sworn  
28 verification of the sales data to counsel for DiPirro within

1 twenty (20) days of the Effective Date;

2 F. On September 21, 2001, Michael DiPirro first  
3 served ITW and other public enforcement agencies with a  
4 document entitled "60-Day Notice of Violation" which provided  
5 ITW and such public enforcers with notice that ITW was in  
6 violation of Health & Safety Code §25249.6 for allegedly  
7 failing to warn purchasers that certain products it sells in  
8 California expose users to the Listed Chemicals;

9 G. On December 6, 2001, Michael DiPirro filed a  
10 complaint entitled Michael DiPirro v. Illinois Tool Works,  
11 Inc., et al. in the Alameda County Superior Court, naming ITW  
12 as a defendant and alleging violations of Business &  
13 Professions Code §17200 and Health & Safety Code §25249.6 in  
14 the interest of the general public in California who have been  
15 exposed to the Listed Chemicals contained in certain products  
16 that ITW manufactures and distributes; and

17 H. Nothing in this Agreement shall be construed as  
18 an admission by ITW of any fact, finding, issue of law or  
19 violation of law; nor shall compliance with this Agreement  
20 constitute or be construed as an admission by ITW of any fact,  
21 finding, conclusion, issue of law or violation of law.

22 However, this paragraph shall not diminish or otherwise affect  
23 the obligations, responsibilities and duties of ITW under this  
24 Agreement.

1 NOW THEREFORE, MICHAEL DIPIRRO AND ITW AGREE AS FOLLOWS:

2 1. Product Warnings and Disclosures. As of the  
3 Effective Date of this Agreement, ITW shall begin to initiate  
4 revisions to its health hazard warnings for (and  
5 identification of toxic ingredients in) its Products to  
6 provide the language set forth in the section 1.1 below.  
7 Beginning 15 days after the Court approves this settlement,  
8 ITW agrees that it will not knowingly manufacture and ship, or  
9 cause to be manufactured and shipped, any Products containing  
10 the Listed Chemicals for sale in the State of California  
11 unless such Products comply with section 1.1 below:

12 1.1 For all staining colors and fluids  
13 containing lead (or lead compounds), such Products shall bear  
14 the following warning statement:

15  
16 "WARNING: This product contains LEAD (or LEAD  
17 COMPOUNDS), a chemical known to the  
18 State of California to cause cancer  
and birth defects (or other  
reproductive harm)."

19 or

20 For Products that contain toluene the Products shall bear the  
21 following warning statement:

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

25 or

26 For Products that contain both lead and toluene the Products  
27 shall bear the following warning statement:

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1                   **"WARNING: This product contains LEAD (or LEAD**  
2                   **COMPOUNDS) and TOLUENE, chemicals**  
3                   **known to the State of California to**  
4                   **cause cancer and birth defects (or**  
5                   **other reproductive harm)."**

6                   The warning and disclosure statement shall be prominently  
7                   placed on the Products with such conspicuousness (as compared  
8                   with other words, statements, designs or devices) on the  
9                   product label, as to render it likely to be read and  
10                  understood by an ordinary individual under customary  
11                  conditions of purchase.

12                  1.2 The warnings required pursuant to  
13                  Paragraphs 1.1 above shall not be required for Products which:  
14                  (a) utilize paints containing six one-hundredths of one  
15                  percent (0.06%) lead by weight or less; or (b) produce either  
16                  a nondetectable test result or a test result no higher than  
17                  600 micrograms/gram (ug/g) of lead. Products satisfying these  
18                  conditions are hereinafter referred to as "Reformulated  
19                  Products."

20                  **2. Payment Pursuant To Health & Safety Code**

21                  **§25249.7(b).** In light of the factors enumerated in Health &  
22                  Safety Code §25249.7(b), ITW agrees to pay a civil penalty of  
23                  \$30,000.00. This amount shall be paid, subject to the  
24                  potential reduction specified in Paragraph 2.1 below and  
25                  according to the following schedule: (a) \$5,000.00 shall be  
26                  paid on January 15, 2003; (b) an additional \$5,000.00 shall  
27                  be paid on March 15, 2003; (c) an additional \$5,000.00 shall  
28                  be paid on May 15, 2003; (d) an additional \$5,000.00 shall be

1 paid on July 15, 2003; (e) an additional \$5,000.00 shall be  
2 paid on September 15, 2003; and (f) a final additional  
3 \$5,000.00 shall be paid on November 15, 2003. The penalty  
4 payment is to be made payable to "Sheffer & Chanler LLP In  
5 Trust For Michael DiPirro". If the Agreement is not approved  
6 by the Court, DiPirro will return all funds, with interest  
7 thereon at the prevailing federal funds rate (currently set at  
8 1.75%), within ten (10) calendar days of notice of the Court's  
9 decision. Penalty monies shall be apportioned by DiPirro in  
10 accordance with Health & Safety Code §25192, with 75% of these  
11 funds remitted to the State of California's Department of  
12 Toxic Substances Control.

13                   **2.1 Reformulation Options.** The Parties hereby  
14 agree that the total amount of civil penalties established in  
15 Paragraph 2.0 above shall be subject to the following  
16 reductions/waivers: (A) the payments otherwise required by  
17 Paragraphs 2.0, subsection (a) shall be waived in their  
18 entirety if, within five (5) days of the date of such payment  
19 would otherwise be due, ITW provides written certification  
20 (including verifying laboratory test results from an  
21 independent federal or state laboratory) to DiPirro that ITW:  
22 (1) can achieve the criteria for Reformulated Products as set  
23 forth in Paragraph 1.2 above with respect to one of the  
24 Products it wishes to continue to offer for sale in  
25 California, and (2) will offer the newly Reformulated Product  
26 for sale in California in all current sizes within one year of  
27

1 the date such payment would otherwise be due; (B) the payments  
2 otherwise required by Paragraph 2.0(b) shall be waived in its  
3 entirety if, within five (5) days of the date that such  
4 payment would otherwise be due, ITW provides such written  
5 certification to DiPirro as to the same two criteria listed in  
6 Paragraph 2.0(A) above as to another of the Products; (C) the  
7 payments otherwise required by Paragraph 2.0(c) shall be  
8 waived in its entirety if, within five (5) days of the date  
9 that such payment would otherwise be due, ITW provides such  
10 written certification to DiPirro as to the same two criteria  
11 listed in Paragraph 2.0(A) above as to another of the  
12 Products; (D) the payments otherwise required by Paragraph  
13 2.0(d) shall be waived in its entirety if, within five (5)  
14 days of the date that such payment would otherwise be due, ITW  
15 provides such written certification to DiPirro as to the same  
16 two criteria listed in Paragraph 2.0(A) above as to another of  
17 the Products; (E) the payments otherwise required by  
18 Paragraph 2.0(e) shall be waived in its entirety if, within  
19 five (5) days of the date that such payment would otherwise be  
20 due, ITW provides such written certification to DiPirro as to  
21 the same two criteria listed in Paragraph 2.0(A) above as to  
22 another of the Products; and (F) the payments otherwise  
23 required by Paragraph 2.0(f) shall be waived in its entirety  
24 if, within five (5) days of the date that such payment would  
25 otherwise be due, ITW provides such written certification to  
26 DiPirro as to the same two criteria listed in Paragraph 2.0(A)

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1 above as to another of the Products. The Parties agree that  
2 ITW's potential interest in and ability to develop and market  
3 Reformulated Products is to be accounted for in this Paragraph  
4 and, since it is not a remedy provided for by law, the absence  
5 of ITW previously developing or marketing Reformulated  
6 Products is not relevant to the establishment of a penalty  
7 amount pursuant to paragraph 2.0 above.

8           **3. Reimbursement Of Fees And Costs.** The parties  
9 acknowledge that, once the injunctive relief provisions and  
10 other monetary terms had been resolved, DiPirro and his  
11 counsel offered to resolve the issue of reimbursement of  
12 attorneys' fees and costs through a noticed motion pursuant to  
13 C.C.P. §1021.5. ITW then expressed a desire to resolve the  
14 fee and cost issue shortly after the other settlement terms  
15 had been finalized. The parties then attempted to (and did)  
16 reach an accord on the compensation due to DiPirro and his  
17 counsel under the private attorney general doctrine codified  
18 at C.C.P. §1021.5 for all work performed through the Effective  
19 Date of the Agreement.

20           Pursuant to C.C.P. §1021.5, ITW agrees to reimburse  
21 DiPirro and his counsel for their reasonable attorneys' fees  
22 and costs incurred as a result of investigating, litigating  
23 and negotiating a settlement in the public interest in the  
24 amount of \$22,000.00 ITW agrees to pay the total sum of  
25 \$22,000.00 within twenty (20) calendar days of the Effective  
26 Date. Payment should be made payable to "Sheffer & Chanler  
27

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1   LLP". If the Agreement is not approved by the Court, DiPirro  
2   will return all funds, with interest thereon at the prevailing  
3   federal funds rate (currently set at 1.75%), within ten (10)  
4   calendar days of notice of the Court's final decision.

5                   **3.1 Additional Fees and Costs in Seeking**

6   **Judicial Approval.** The parties acknowledge that, pursuant to  
7   recent interpretations of Health & Safety Code §25249.7, a  
8   noticed motion is required to obtain judicial approval of this  
9   Agreement. Pursuant to C.C.P. §1021.5, ITW agrees to  
10   reimburse DiPirro and his counsel for their reasonable fees  
11   and costs incurred in seeking judicial approval of this  
12   Agreement.

13                   **3.2 DiPirro and his counsel expressly agree**

14   that ITW's liability for payment due under this paragraph for  
15   work performed in the trial court shall not exceed \$3,500.00  
16   if no opposition to the motion (nor objection to the terms of  
17   the agreement) is filed or otherwise transmitted by any third  
18   party.

19                   **3.3 ITW agrees to use its best efforts to**

20   support each of the terms of the Agreement, especially if any  
21   third party, including any public enforcer, objects or  
22   otherwise comments to one or more provisions of this  
23   Agreement.

24                   **3.4 In the event that such an objection or**

25   opposition is transmitted or filed by any third party, ITW  
26   agrees to reimburse DiPirro for his reasonable attorneys' fees  
27

1 and costs in an amount not to exceed \$1,500.00 (above the cap  
2 provided in paragraph 3.2 above).

3           3.5 In the event that defending this Agreement  
4 from such objection or opposition from any third party  
5 requires a declaration from an expert, then ITW agrees to  
6 reimburse DiPirro for such expert's reasonable fees and costs  
7 in an amount not to exceed \$500.00 (above the caps provided in  
8 paragraphs 3.2 and 3.4 above).

9           3.6 In the event that DiPirro and his counsel  
10 incur fees in connection with work in the appellate courts as  
11 part of the process to obtain judicial approval of this  
12 Agreement, ITW agrees to reimburse DiPirro for his reasonable  
13 fees and costs for such efforts without limitation unless it  
14 chooses to no longer defend this Agreement against an attack  
15 by a third party.

16           3.7 ITW's payment of DiPirro's legal fees and  
17 costs under this subparagraph shall be due within twenty  
18 (20) calendar days after receipt of a detailed billing  
19 statement from DiPirro ("Additional Fee Claim"). Payment of  
20 the Additional Fee Claim shall be made payable to the  
21 "Sheffer & Chanler LLP." ITW has the right to object to  
22 DiPirro's reimbursement request and may submit the  
23 resolution of this issue to the American Arbitration  
24 Association (AAA) in Northern California to determine the  
25 reasonableness of the additional fees and costs sought,  
26 provided that an arbitration claim has been filed with AAA  
27

1 and served on DiPirro within ten (10) calendar days  
2 following DiPirro's service of the Additional Fee Claim on  
3 ITW. If an arbitration notice is not filed with AAA in a  
4 timely manner, ITW' right to arbitrate this matter is  
5 waived. DiPirro may then file a motion, pursuant to C.C.P.  
6 §1021.5, with the Court seeking his (and his attorneys')  
7 fees and costs incurred as set forth in this paragraph.]

8 **4. Michael DiPirro's Release Of ITW.** Michael  
9 DiPirro, by this Agreement, on behalf of himself, his agents,  
10 representatives, attorneys, assigns and in the interest of the  
11 general public, waives all rights to institute or participate  
12 in, directly or indirectly, any form of legal action, and  
13 releases all claims, liabilities, obligations, losses, costs,  
14 expenses, fines and damages, against ITW and its subsidiaries,  
15 affiliates (as defined by the United States Security and  
16 Exchange Commission), divisions, subdivisions, brands,  
17 employees, agents, distributors, retailers, and/or customers,  
18 and the successors and assigns of any them, whether under  
19 Proposition 65 or the Business & Profession Code §17200 and  
20 §17500 based on ITW's alleged failure to warn about exposure  
21 to (and identify the presence of) the Listed Chemicals  
22 contained in any of the Products.

23 **5. ITW's Release Of Michael DiPirro.** ITW, by this  
24 Agreement, waives all rights to institute any form of legal  
25 action against Michael DiPirro or his attorneys or  
26 representatives, for all actions or statements made by Michael  
27

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1 DiPirro, and his attorneys or representatives, in the course  
2 of seeking enforcement of Proposition 65 or Business &  
3 Profession Code §17200 against ITW.

4           **6. Court Approval.** If, for any reason, this  
5 Consent Judgment is not approved by the Court, this Agreement  
6 shall be deemed null and void.

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

11           **8. Attorney's Fees.** In the event that a dispute  
12 arises with respect to any provision(s) of this Agreement  
13 (including, but not limited to, disputes arising from the  
14 payments to be made under this Agreement), the prevailing  
15 party shall be entitled to recover costs and reasonable  
16 attorneys' fees.

17           This provision, however, shall not apply to DiPirro  
18 and his counsel's additional fees set forth in paragraphs 3.1  
19 to 3.7 which are governed by the principles codified at C.C.P.  
20 § 1021.5.

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

23           **10. Notices.** All correspondence to Michael DiPirro  
24 shall be mailed to:

25                           Gregory M. Sheffer  
26                           Sheffer & Chanler LLP  
27                           4400 Keller Avenue, Suite 200  
28                           Oakland, CA 94605

1 (510) 577-0747

2 All correspondence to ITW shall be mailed to:

3 Siegmund Shyu  
4 Morrison & Foerster LLP  
5 555 West Fifth Street  
6 Suite 3500  
7 Los Angeles, CA 90013-1024  
8 (213) 892-5200

9 **11. Compliance With Reporting Requirements (Health**  
10 **& Safety Code §25249.7(f)).** The parties acknowledge that the  
11 reporting provisions of Health & Safety Code §25249.7(f) apply  
12 to this Consent Judgment. Counsel for DiPirro shall comply  
13 with that section by submitting the required reporting form  
14 to, and serving a copy of this Agreement on, the California  
15 Attorney General's Office when noticing the Motion to Approve  
16 hearing.

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

1           **13. Authorization.** The undersigned are authorized  
2 to execute this Agreement on behalf of their respective  
3 parties and have read, understood and agree to all of the  
4 terms and conditions of this Agreement.

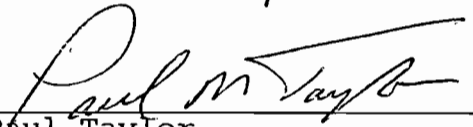
5  
6 **AGREED TO:**

**AGREED TO:**

7 **DATE:** \_\_\_\_\_

**DATE:** 8/14/02

8  
9 \_\_\_\_\_  
10 Michael DiPirro  
11 PLAINTIFF

  
\_\_\_\_\_  
12 Paul Taylor  
13 General Manager, ITW/Dykem  
14 for  
15 Illinois Tool Works Inc.  
16 DEFENDANT

17  
18 **APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

19 **DATE:** \_\_\_\_\_

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

20 \_\_\_\_\_  
21 Gregory Sheffer  
22 Attorneys for Plaintiff  
23 MICHAEL DIPIRRO

\_\_\_\_\_  
24 Siegmund Shyu  
25 Attorneys for Defendant  
26 ILLINOIS TOOL WORKS INC.

27  
28 **SETTLEMENT AGREEMENT**

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3 parties and have read, understood and agree to all of the  
4 terms and conditions of this Agreement.

5  
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**AGREED TO:**

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

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

8  
9 \_\_\_\_\_  
10 Michael DiPirro  
11 PLAINTIFF

\_\_\_\_\_   
Paul Taylor  
General Manager, ITW/Dykem  
for  
Illinois Tool Works Inc.  
DEFENDANT

12  
13  
14 **APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

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

DATE: 8-14-02

16  
17 \_\_\_\_\_  
18 Gregory Sheffer  
19 Attorneys for Plaintiff  
MICHAEL DIPIRRO

Siegmund Shyu  
Siegmund Shyu  
Attorneys for Defendant  
ILLINOIS TOOL WORKS INC.

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27  
28 SETTLEMENT AGREEMENT

13. 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:

AGREED TO:

DATE: 8/20/02

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

*Michael DiPirro*  
Michael DiPirro  
PLAINTIFF

Paul Taylor  
General Manager, ITW/Dykem  
for  
Illinois Tool Works Inc.  
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: August 16, 2002

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

*Gregory Sheffer*  
Gregory Sheffer  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

Siegmund Shyu  
Attorneys for Defendant  
ILLINOIS TOOL WORKS INC.

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**EXHIBIT A**

Staining Colors and Layout Fluids:

- 1) Orange Staining Color (8 oz - Part #81448; 1 gal - Part #81748; 5 gal - Part #81848);
- 2) Yellow Staining Color (8 oz - Part #81440; 1 gal - Part #81740; 5 gal - Part #81840);
- 3) Yellow Spray (16 oz - Part #81040);
- 4) Brown Staining Color (8 oz - Part #81402; 1 gal - Part #81702; 5 gal - #81802);
- 5) Dark Green Staining Color (8 oz - Part #81403; 1 gal - Part #81703; 5 gal - #81803); and
- 6) Light Green Staining Color (8 oz - Part #81420; 1 gal - Part #81720; 5 gal - #81820)