

FILED

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8 AS YOU SOW

JUN 29 1995  
*M. Louten*  
HOWARD HANSON  
MARIN COUNTY CLERK  
By M. Louten, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE CITY AND COUNTY OF MARIN

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

13 Plaintiff,

14 v.

15 JOHN C. DOLPH COMPANY, a  
16 corporation, and DOES 1 through  
17 1000,

18 Defendants,

No. 163526

JUDGMENT ON STIPULATION FOR  
ENTRY OF JUDGMENT

19 In the above-entitled action, plaintiff As You Sow  
20 and defendant John C. Dolph Company, having stipulated through  
21 their respective representatives that judgment be entered  
22 pursuant to the terms of the settlement agreement entered into  
23 by the parties on June 26, 1995, said stipulation being  
24 attached hereto,

25 IT IS HEREBY ORDERED that judgment be entered in  
26 accordance with the terms of the stipulation between the  
27 parties.

28 Dated: June 29, 1995

*Peter A. Louten*  
Judge of the Superior Court

ENTERED

## SETTLEMENT AGREEMENT

On June 26, 1995 in San Francisco, California, As You Sow ("AYS") and John C. Dolph Co. ("Dolph") agreed to the following terms and conditions:

### **WHEREAS:**

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

Dolph is a New Jersey corporation that manufactures and distributes varnishes, enamels, lacquers, and other special-purpose 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, above a specified threshold level, pursuant to Health & Safety Code §25249.8 and thus became subject to warning requirements pursuant to Health & Safety Code §25249.6 on January 1, 1992; and

A list of the products containing toluene and which are covered by this Agreement is provided in Exhibit A (the "Products"), attached hereto. The Products have been manufactured by Dolph in New Jersey and have, *inter alia*, been sold for industrial use in California since January 1, 1992; and

On September 23, 1994, AYS served Dolph with a 60-Day notice of Proposition 65 violation which provided Dolph 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 the chemical toluene; and

On March 30, 1995, AYS served Dolph with a summons and complaint in the case of As You Sow v. John C. Dolph Company, et al., (Case No. 163526) which is currently pending in the Marin County Superior Court; and

Dolph has modified the labels for the Products to provide the warnings required pursuant to Health & Safety Code §25249.6 et seq.; and

Dolph has reformulated the Products to remove toluene as a chemical ingredient in the formulation of the Products.

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

1. Beginning immediately, Dolph agrees that it will not ship (or caused to be shipped) any products containing

toluene, the use of which, in accordance with the provisions of Health & Safety Code §25249.6 et seq., will expose users to toluene in excess of the threshold levels for exposure to toluene as set for therein, or in regulations promulgated thereunder, for sale in the state of California unless such products bear the following warning statement on the products' label:

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

This warning statement shall be displayed in accordance with Title 22, California Code of Regulations §12601, et seq.

2. Dolph agrees that within ninety (90) days from the date this agreement is executed, it shall provide the following WARNING MATERIALS to its California distributors who sell the Products in an effort to ensure that users receive Proposition 65 warnings for Products that have already been shipped for sale in California: (a) a letter to Dolph's distributors which provides instructions for the placement of the warning stickers discussed below; and (b) at least 200 warning stickers printed in black ink on a white background, measuring at least 5 cm by 2 cm, and displaying the following statement:

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

The letter to Dolph's distributors is attached hereto as Exhibit B. An exemplar of the warning stickers, referenced above, is attached hereto as Exhibit C.

3. MSDS Revisions. Dolph agrees to initiate revisions to the Products' Material Safety Data Sheets ("MSDS") to add warnings consistent with the warning language outlined in ¶ 1 of this Agreement. These revisions shall be completed by Dolph before July 1, 1995.

4. Dolph agrees to pay the sum of \$27,500 pursuant to Health & Safety Code §25249.7(b). Such monies shall be apportioned by AYS in accordance with Health and Safety Code §25192. The first installment, in the amount of \$7,500, shall be payable within 30 days of the mutual execution of this agreement. The second installment, in the amount of \$20,000, shall be payable within 90 days of the mutual execution of this agreement. The second installment, in the amount of \$20,000, shall be waived upon written certification to AYS from Dolph, before July 31, 1995 that Dolph has reformulated all of the Products to eliminate the presence of toluene as an intended ingredient in the Products.

5. In an effort to defray AYS' 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 Dolph's attention and negotiating a settlement in the public interest, Dolph shall pay AYS the reasonable sum of \$9,500. Payment of this sum shall be made within thirty days of the mutual execution of this agreement.

6. AYS, by this Agreement, waives all rights to institute any form of action or proceeding whatsoever against Dolph, its distributors or retailers which sell Dolph's Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute, regulation or common law based on Dolph's alleged failure to warn consumers and users about exposure to toluene from any of the Products identified in Exhibit A.

7. Dolph, by this Agreement, waives all rights to institute any form of legal action or proceeding 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 Dolph based on Dolph's alleged failure to warn consumers and users about exposure to toluene from any of the Products identified in Exhibit A, which are the subject matter of the case entitled As You Sow v. John C. Dolph Company, et al., (Marin County Superior Court Case No. 163526).

8. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the Marin County Superior Court in accordance with the terms of this Agreement.

9. 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.

10. 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.

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

12. All correspondence to AYS shall be mailed to:

Andrew L. Packard, Esq.  
Chanler & Associates  
1700 Montgomery Street, Suite 110  
San Francisco, CA 94111

All correspondence to Dolph shall be mailed to:

George Birdsey, Vice President  
John C. Dolph Co.  
320 New Road  
P.O. Box 267  
Monmouth Junction, N.J. 08852

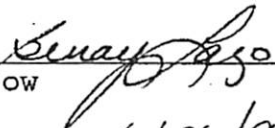
and

Carl R. Woodward III, Esq.  
Carella, Byrne, Bain, Gilfillan,  
Cecchi, Stewart & Olstein  
6 Becker Farm Road  
Roseland, New Jersey 07068

13. Nothing in this Agreement shall be construed as an admission by Dolph of any fact, issue of law or violation of law. Nor shall compliance with this Agreement constitute or be construed as an admission by Dolph of any fact, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Dolph under this Agreement.

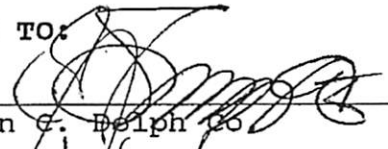
14. The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

By:   
As You Sow

Dated: 6/26/95

AGREED TO:

By:   
John C. Dolph Co.

Dated: JUNE 14, 1995

EXHIBIT A

AC-43-66  
T-220  
BC-359  
LC-705 BULK  
LO-705  
MY-739  
T-200  
BC-325  
BC-359-MS  
LC-705 SPRAY  
LR-705

EXHIBIT B

[John C. Dolph Letterhead]  
IMPORTANT LEGAL NOTICE

Date:

Attention: Distributors of John C. Dolph Company's (Dolph)  
Products

Subject: California Proposition 65 Warnings for Products  
Containing Toluene

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This letter is to advise you that Dolph's products listed in Attachment A to this letter expose users of those products to TOLUENE, a chemical known to the State of California to cause birth defects or other reproductive harm. 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 toluene's reproductive harm.

Although Dolph has modified the labels for the listed products to provide the proper warnings, some of the listed products entered the chain of distribution prior to Dolph's label change. In order to provide the required warnings for 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 this letter if you affix the enclosed warning stickers to the products in the manner described below. Enclosed please find two hundred (200) warning stickers.

You should affix a warning sticker to the container of each product listed on Attachment A which does not already 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, 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 George Birdsey 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.



EXHIBIT C

[Dolph to affix exemplar warning sticker for the Products here]

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