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6 Attorneys for Plaintiff
AS YOU SOW
7

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

11 AS YOU SOW, a non-profit)
corporation,)
12)
Plaintiff)
13)
v.)
14)
MONSANTO COMPANY,)
15 a corporation,)
16)
Defendant.)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)


Case No. 975872
STIPULATION FOR
ENTRY OF JUDGMENT

FILED
San Francisco County Superior Court
FEB 29 1995
ALAN CARLSON, Clerk
BY: *William E. [Signature]* Deputy Clerk
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IT IS HEREBY STIPULATED, by and between plaintiff AS
You Sow and defendant Monsanto Company, through their
respective representatives, that judgment in the above-
entitled action be entered in accordance with the terms of the
settlement agreement between the parties, which is attached
hereto as Exhibit A.

Dated: February 27, 1996

by: 
Joshua M. King
Attorneys for Plaintiff
AS YOU SOW

Dated: February 16, 1996


by: 
Holly Nylander Stuber
Attorneys for Defendant
MONSANTO COMPANY

Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into by and between As You Sow, a California nonprofit corporation ("AYS") and MONSANTO COMPANY, a Delaware corporation ("MONSANTO"), as of February 16, 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;

MONSANTO is a company that manufactures and/or distributes various products in the State of California, including some that contain the following chemicals listed pursuant to Proposition 65: Toluene and benzene;

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

The Products have been distributed and sold by MONSANTO for use in California at various times since at least February 27, 1988;

On January 9, 1995, AYS first served MONSANTO and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided MONSANTO and such public enforcers with notice that MONSANTO 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;

Subsequent to provision of the above-described Notice by AYS, Monsanto modified the warnings on the labels and MSDSs of its Gelva products (which are industrial-use-only adhesive products sold in 55-gallon drums) to include the "safe harbor" language of the Proposition 65 relating to reproductive toxicants. These products, which, on the Material Safety Data Sheets, identify benzene and toluene as present, are now labelled with the following warnings:

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

On February 6, 1996, AYS filed a complaint entitled As You Sow v. Monsanto Company, et al. (No. 975872) in the San Francisco Superior Court, naming MONSANTO as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly are exposed to chemicals listed pursuant to Proposition 65 contained in certain MONSANTO products; and

AYS and Monsanto desire to settle all disputes, claims and causes of action of any kind that the parties hereto have, may have, or claim to have against each other arising from or relating to the 60-Day notices identified above.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Restitution.** MONSANTO agrees to pay \$12,500 to AYS within 10 days of execution of this Agreement as restitution. This payment, which is made pursuant to Business & Professions Code §17203, shall be forwarded by AYS to Video Project to assist in the distribution of free environmental videos in schools and to the AYS Proposition 65 Enforcement Fund to fund ongoing investigation and monitoring of Proposition 65 violations.

2. **Penalty.** Pursuant to Health & Safety Code §25249.7(b), MONSANTO shall pay a civil penalty of \$50,000 on or before January 1, 1997. This penalty shall be waived upon written certification that MONSANTO has allocated an additional \$100,000 in its 1996 and 1997 budgets for research and development of product technology to replace toluene-based adhesives with water-based products.

3. **Reimbursement of Fees and Costs.** MONSANTO agrees to reimburse AYS for its investigation fees and costs, reasonable attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to MONSANTO's attention, litigating and negotiating a settlement in the public interest. Within 10 days of execution of this Agreement, MONSANTO shall pay AYS \$15,000 as reimbursement for these fees and costs incurred in this matter.

4. **AYS Release.** AYS, by this Agreement, waives all rights to institute action against MONSANTO, its officers, directors, attorneys, representatives, employees, distributors or customers (the "Monsanto Releasees"), whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim, based on MONSANTO'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.

5. **MONSANTO Release.** MONSANTO, 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 MONSANTO based on MONSANTO'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. Warranties and Representations. The parties make the following representations and warranties:

6.1. MONSANTO represents and warrants as follows:

6.1.1. 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, to the best knowledge of the individual signing this Agreement, MONSANTO has no analytical, risk assessment, or other data indicating that an exposure to any or all 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).

6.1.2. In the event that MONSANTO obtains analytical, risk assessment, or other data that shows that an exposure to any or all 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), MONSANTO shall provide AYS with 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 thirty (30) days of receipt of MONSANTO's exposure data, AYS shall provide MONSANTO with written notice of its desire to challenge the data (in the event that AYS chooses to make such a challenge), and AYS and MONSANTO shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by AYS of such notice of challenge, AYS and MONSANTO agree to submit such challenge to binding arbitration, with an arbitrator acceptable to both parties. The prevailing party shall be entitled to reasonable attorney's fees and costs associated with such an arbitration. If AYS does not challenge MONSANTO's notice or the arbitrator determines that no warning is required for a particular Product or Products, MONSANTO shall no longer be required to provide the warnings described in Section 1 of this Agreement for those Products.

6.1.3. MONSANTO understands that the sales data provided to counsel for AYS by MONSANTO in a letter dated November 28, 1995 was a material factor upon which AYS has relied

to determine the amount of penalties and restitution in Sections 1 and 2 of this agreement. The sales data provided in the above-referenced letter is true and accurate in all material respects to the best knowledge of the individual signing this Agreement. MONSANTO acknowledges that, in the event AYS demonstrates that the sales data provided is materially inaccurate, all other parts of this Agreement notwithstanding, AYS will have the right to rescind this Agreement, return all monies paid by MONSANTO to AYS, and re-institute an enforcement action against MONSANTO. In such a case, all applicable statutes of limitation shall be deemed tolled for the period between February 6, 1996 (the date AYS filed the instant action) and the date AYS notifies MONSANTO that it is rescinding this Agreement pursuant to this subpart.

7. **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.

8. **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.

9. **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.

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

11. **Notices.** All correspondence to AYS shall be mailed to:

Joshua M. King, Esq.
Chanler & Somers
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to MONSANTO shall be mailed to:

William D. Lambert, Esq.
Monsanto Company G4EM
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167

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

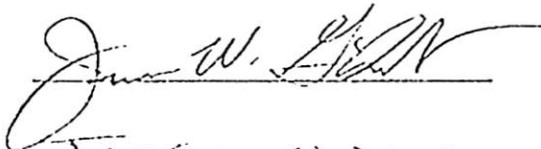

13. Authorization. The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

AS YOU SOW

MONSANTO COMPANY



Lisa S. Wiggins
Printed Name

JAMES W. GIDDUMB
Printed Name

General Counsel
Title

Business Manager, Business & Builders.
Title

EXHIBIT A
to Settlement Agreement between
As You Sow and Monsanto Company

Products

Gelva Multipolymer Resin Solution 1160
Gelva Multipolymer Resin Solution 13XE-55
Gelva Multipolymer Resin Solution 1678
Gelva Multipolymer Resin Solution 1910
Gelva Multipolymer Resin Solution 2067
Gelva Multipolymer Resin Solution 2102
Gelva Multipolymer Resin Solution 2145
Gelva Multipolymer Resin Solution 2165
Gelva Multipolymer Resin Solution 2348
Gelva Multipolymer Resin Solution 2393
Gelva Multipolymer Resin Solution 2393
Gelva Multipolymer Resin Solution 2402
Gelva Multipolymer Resin Solution 2407
Gelva Multipolymer Resin Solution 2450
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Gelva Multipolymer Resin Solution 2653
Gelva Multipolymer Resin Solution 2655
Gelva Multipolymer Resin Solution 2659
Gelva Multipolymer Resin Solution 2663
Gelva Multipolymer Resin Solution 2671
Gelva Multipolymer Resin Solution 2675
Gelva Multipolymer Resin Solution 2687
Gelva Multipolymer Resin Solution 269
Gelva Multipolymer Resin Solution 2727
Gelva Multipolymer Resin Solution 2737
Gelva Multipolymer Resin Solution 2741
Gelva Multipolymer Resin Solution 276
Gelva Multipolymer Resin Solution 2775
Gelva Multipolymer Resin Solution 2775
Gelva Multipolymer Resin Solution 2777
Gelva Multipolymer Resin Solution 2787
Gelva Multipolymer Resin Solution 2795
Gelva Multipolymer Resin Solution 2797
Gelva Multipolymer Resin Solution 2803

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