

Defendants.

1
2 IT IS HEREBY STIPULATED, by and between plaintiff As
3 You Sow and defendant Pro-Line Paint Co., through their
4 respective representatives, that judgment in the above-
5 entitled action be entered in accordance with the terms of the
6 settlement agreement between the parties, which is attached
7 hereto as Exhibit A.
8

9
10 Dated: January 26, 1995

by: 

Mark Todres
Attorneys for Plaintiff
AS YOU SOW

11
12
13
14 Dated: January 22, 1995

by: 

Ernie Soeterik
Vice President
PRO-LINE PAINT CO.

Exhibit A

SETTLEMENT AGREEMENT

On January 26, 1995 in San Francisco, California, **As You Sow** ("AYS") and **Pro-Line Paint Co.** ("Pro-Line") 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

Pro-Line is a Delaware company that currently manufactures and distributes boat repair and coating products, some of which contain toluene; 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, pursuant to Health & Safety Code §25249.8; and

A list of the paint, boat repair and coating products containing toluene which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured by Pro-Line for sale and/or use in California since January 1, 1992; and

On August 25, 1994, AYS served Pro-Line with a document entitled "60-Day Notice" which provided Pro-Line 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 October 28, 1994, AYS filed a complaint entitled As You Sow v. Pro-Line Paint Company, et al. (No. 162033) in Marin County 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 toluene in certain Pro-Line products; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Pro-Line agrees that as of March 15, 1995, 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 a chemical known to the State of California to cause birth defects or other reproductive harm."

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 sticker attached hereto as Exhibit B satisfies this requirement.

2. Pro-Line agrees that within thirty (30) days from the date this agreement is executed, it shall provide the following warning materials to its customers that Pro-Line 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 a chemical known to the State of California to cause birth defects or other reproductive harm."

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, Pro-Line shall suspend shipments of the Products to such retailer until such retailer agrees to place the stickers on the Products.

3. Pro-Line agrees to pay \$7,500 to AYS upon execution of this Agreement. The restitutionary component of this payment, which is made pursuant to Business & Professions Code §17203, shall be divided between the Silicon Valley Toxics Coalition and West County Toxics Coalition. The silicon Valley Toxics Coalition is involved in numerous projects to educate the public about the environmental hazards of Silicon Valley industries, workplace exposure to toxic chemicals and corporate compliance with environmental laws. The West County Toxics Coalition is a multi-racial, multi-ethnic membership organization that provides environmental education to low income residents of Contra Costa County. 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 Pro-Line's attention, litigating and negotiating a settlement in the public interest.

4. AYS, by this Agreement, waives all rights to institute action against Pro-Line, its distributors or retailers which sell Pro-Line's Products, whether under Proposition 65,

Business & Profession Code §§17200 et seq., or any other statute or common law claim based on Pro-Line's failure to warn consumers about exposure to toluene from any of the Products identified in Exhibit A.

5. Pro-Line, 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 Pro-Line.

6. Pro-Line agrees to provide AYS with all Material Safety Data Sheets which Pro-Line has received from its suppliers of toluene over the last four years, and copies of labels from the containers in which Pro-Line has received toluene over the last four year period.

7. 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.

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

11. 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 Pro-Line shall be mailed to:

Ernie Soeterik, Vice President
Pro-Line Paint Co.
2646 Main Street
San Diego, CA 92113-3697

12. Nothing in this Agreement shall be construed as an admission by Pro-Line 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 Pro-Line of any fact, finding, conclusion, issue of law, or violation of law.

However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of Pro-Line under this Agreement.

13. 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: _____

Benay Laro
As You Sow

Dated: _____

1/26/95

AGREED TO:

By: _____

[Signature]
Pro-Line Paint Co.

Dated: JANUARY 23, 1995

Exhibit A

MATERIALS CONTAINING TOLUENE

ATTACHMENT A

#11TOL
#13E
#35
1200F1
3000 Series
4600 Series
8002

Exhibit B

PRO-LINE PAINT CO.

paint manufacturers • coating engineers

(619) 231-2313

Telex No.: 695085 Pro Line SDG

FAX No.: (619) 236-9681

2646 MAIN STREET

SAN DIEGO, CALIFORNIA 92113-3697

WARNING! This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

Exhibit C

PRO-LINE PAINT CO.

paint manufacturers • coating engineers

(619) 231-2313
Telex No.: 695085 Pro Line SDG
FAX No.: (619) 236-9681

2646 MAIN STREET

SAN DIEGO, CALIFORNIA 92113-3697

IMPORTANT LEGAL NOTICE

Date: January 23, 1995
Attn: Customers of Pro-Line Paint Company
Sub: California Proposition 65 Warnings
for Products Containing Toluene

This letter is to advise you that the Pro-Line Paint Company 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 and/or users of the products listed on Attachment A must be given clear and reasonable warning of toluene's reproductive toxicity.

Although Pro-Line Paint Co. intends to begin labelling the listed products with proper warnings, it has not yet done so. Until the labelling change is completed, 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 letter 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.

January 23, 1995/Legal Notice,ltr

Page 2

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 letter 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 letter 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 me at 1-619-231-2313 by phone, 1-619-236-9681 by fax, or by mail at the above address. In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

E. Soeterik, Chief Chemist
Vice President, Operations

ES/msg

Enclosures

Exhibit D

(619) 231-2313

Telex No.: 695085 Pro Line SDG

FAX No.: (619) 236-9681

PRO-LINE PAINT CO.

paint manufacturers • coating engineers

2646 MAIN STREET

SAN DIEGO, CALIFORNIA 92113-3697

(Date)

The undersigned certifies that this retailer has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements, (b) the list of Pro-Line Paint Co. 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.

legalntc.ays