

ENDORSED
FILED
ALAMEDA COUNTY

APR - 9 2001

CLERK OF THE SUPERIOR COURT

By CHRISTINE MARKS

Deputy

David Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
BUSH & HENRY
ATTORNEYS AT LAW
4400 Keller Avenue, Suite 200
Oakland, CA 94605
Tel: (510) 577-0747

Clifford A. Chanler, State Bar No. 135543
CHANLER LAW GROUP
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840
Tel: (203) 966-9911

Attorneys for Plaintiff
MICHAEL DIPIRRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MICHAEL DIPIRRO	)	No. H218321-7
	)	
Plaintiff,	)	
	)	<u>CONSENT JUDGMENT</u>
v.	)	
	)	
SIG MANUFACTURING COMPANY,	)	
INC.; and DOES 1 through 1000,	)	
	)	
Defendants.	)	
_____	)	

This Consent Judgment ("Agreement") is entered into by
and between Michael DiPirro, a California citizen, and SIG
Manufacturing Company, Inc., an Iowa corporation ("SIG"), as
of March 29, 2001 (the "Effective Date"). The parties agree
to the following terms and conditions:

CONSENT JUDGMENT

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 or
6 produced by consumer and industrial products;

7 B. SIG is a company that currently manufactures,
8 distributes and/or sells adhesives and fuel in the State of
9 California that contain chemicals listed pursuant to
10 Proposition 65 (California Health & Safety Code §25249.5 et
11 seq.) including trichloethylene and nitromethane (the "Listed
12 Chemicals");

13 C. The products that contain one or more of the
14 "Listed Chemicals" and which are covered by this Agreement are
15 set forth in Exhibit A (the "Products"). The Products have
16 been manufactured, distributed, and/or sold by SIG for use in
17 California since at least January 12, 1997;

18 D. On November 24, 2000, Michael DiPirro first
19 served SIG and other public enforcement agencies with a
20 document entitled "60-Day Notice of Violation" which provided
21 SIG and such public enforcers with notice that SIG was
22 allegedly in violation of Health & Safety Code §25249.6 for
23 allegedly failing to warn purchasers that certain products it
24 sells, or otherwise offers for use in California expose users
25 to Proposition 65-listed chemicals;

26 E. On February 22, 2001, Michael DiPirro filed a
27 complaint entitled Michael DiPirro v. SIG Corporation; et al.

28 CONSENT JUDGMENT

1 in the Alameda County Superior Court, naming SIG as a
2 defendant and alleging violations of Business & Professions
3 Code §17200 and Health & Safety Code §25249.6 on behalf of
4 individuals in California who allegedly have been exposed to
5 the "Listed Chemicals" contained in or produced by certain SIG
6 products;

7 F. On January 12, 2001, Michael DiPirro first
8 served SIG and other public enforcement agencies with a
9 document entitled "Supplemental 60-Day Notice of Violation"
10 which provided SIG and such public enforcers with notice that
11 SIG was allegedly in violation of Health & Safety Code
12 §25249.6 for allegedly failing to warn purchasers that certain
13 additional products it sells, or otherwise offers for use in
14 California expose users to Proposition 65-listed chemicals;
15 and

16 G. On March 26, 2001, Michael DiPirro amended the
17 complaint entitled Michael DiPirro v. SIG Corporation; et al.
18 in the Alameda County Superior Court, adding the additional
19 products covered by the "Supplemental 60-Day Notice of
20 Violation".

21 H. Nothing in this Agreement shall be construed as
22 an admission by SIG of any fact, finding, issue of law, or
23 violation of law, nor shall compliance with this Agreement
24 constitute or be construed as an admission by SIG of any fact,
25 finding, conclusion, issue of law, or violation of law.
26 However, this paragraph shall not diminish or otherwise affect
27 the obligations, responsibilities, and duties of SIG under

28 CONSENT JUDGMENT

1 this Agreement.

2
3 **NOW THEREFORE, MICHAEL DIPIRRO AND SIG AGREE AS FOLLOWS:**

4 **1. Product Warnings.** Beginning on April 15, 2001,
5 SIG agrees that it will not knowingly ship (or cause to be
6 shipped) any Products that contain the Listed Chemicals for
7 sale in the State of California unless such Products comply
8 with section 1.1 below:

9 **1.1** All Products that contain
10 trichloroethylene or nitromethane shall bear the following
11 warning statement:

12 **WARNING: This product contains**
13 **trichloroethylene [nitromethane], a**
14 **chemical known to the State of**
California to cause cancer";

15 or

16 **"WARNING: This product contains a chemical**
17 **known to the State of California to**
cause cancer";

18 The warning statement shall be prominently
19 placed upon the Product's label with such conspicuousness, as
20 compared with other words, statements, designs or devices on
21 the label as to render it likely to be read and understood by
22 an ordinary individual under customary conditions of purchase
23 or use.

24 **2. Payment Pursuant To Health & Safety Code**
25 **\$25249.7(b).** Pursuant to Health & Safety Code \$25249.7(b),
26 SIG shall pay a civil penalty of \$4,000 (four thousand
27 dollars). The payment of \$4,000 shall be paid within five (5)

28 CONSENT JUDGMENT

1 calendar days of the Effective Date. The penalty payment is
2 to be made payable to "Chanler Law Group In Trust For Michael
3 DiPirro". Penalty monies shall be apportioned by DiPirro in
4 accordance with Health & Safety Code §25192, with 75% of these
5 funds remitted to the State of California's Department of
6 Toxic Substances Control.

7 **3. Reimbursement Of Fees And Costs.** The parties
8 acknowledge that DiPirro offered to resolve the dispute
9 without reaching terms on the amount of fees and costs to be
10 reimbursed, thereby leaving this open issue to be resolved
11 after the material terms of the agreement had been reached,
12 and the matter settled. SIG then expressed a desire to
13 resolve the fee and cost issue concurrently with other
14 settlement terms, so the parties tried to reach an accord on
15 the compensation due to DiPirro and his counsel under the
16 private attorney general doctrine codified at C.C.P. §1021.5.

17 SIG shall reimburse DiPirro for his fees and costs,
18 incurred as a result of investigating, bringing this matter to
19 SIG's attention, litigating and negotiating a settlement in
20 the public interest. SIG shall pay \$18,775 (eighteen thousand
21 seven hundred seventy-five dollars) for pre-60 Day Notice
22 investigation fees and costs and all other attorneys' fees and
23 litigation costs. SIG agrees to pay the total sum of \$18,775
24 (eighteen thousand seven hundred seventy-five dollars) within
25 five (5) calendar days of the Effective Date. Payment should
26 be made payable to the "Chanler Law Group".

27 **4. Michael DiPirro's Release Of SIG.** Michael
28

CONSENT JUDGMENT

1 DiPirro, by this Agreement, on behalf of himself, his agents,
2 representatives, attorneys, assigns and the citizens of the
3 State of California, waives all rights to institute or
4 participate in, directly or indirectly, any form of legal
5 action, and releases all claims, liabilities, obligations,
6 losses, costs, expenses, fines and damages, against SIG and
7 its directors, officers, employees, affiliates, successors and
8 assigns, whether under Proposition 65 or the Business &
9 Profession Code §17200 et seq. based on SIG's alleged failure
10 to warn about exposure to the Listed Chemicals contained in or
11 produced by any of the Products.

12 **5. SIG's Release Of Michael DiPirro.** SIG, by this
13 Agreement, waives all rights to institute any form of legal
14 action against Michael DiPirro and his attorneys or
15 representatives, for all actions or statements made by Michael
16 DiPirro, and his attorneys or representatives, in the course
17 of seeking enforcement of Proposition 65 or Business &
18 Profession Code §17200 against SIG.

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

22 **7. SIG Sales Data.** SIG understands that the sales
23 data provided to counsel for DiPirro by SIG was a material
24 factor upon which DiPirro has relied to determine the amount
25 of payments made pursuant to Health & Safety Code §25249.7(b)
26 in this Agreement. To the best of SIG's knowledge, the sales
27 data provided is true and accurate. In the event that DiPirro

28 CONSENT JUDGMENT

1 discovers facts which demonstrate to a reasonable degree of
2 certainty that the sales data is materially inaccurate, the
3 parties shall meet in a good faith attempt to resolve the
4 matter within ten (10) days of SIG's receipt of notice from
5 DiPirro of his intent to challenge the accuracy of the sales
6 data. If this good faith attempt fails to resolve DiPirro's
7 concerns, DiPirro shall have the right to rescind the
8 Agreement and re-institute an enforcement action against SIG,
9 provided that all sums paid by SIG pursuant to paragraphs 2
10 and 3 are returned to SIG within ten (10) days from the date
11 on which DiPirro notifies SIG of his intent to rescind this
12 Agreement. In such case, all applicable statutes of
13 limitation shall be deemed tolled for the period between the
14 date DiPirro filed the instant action and the date DiPirro
15 notifies SIG that he is rescinding this Agreement pursuant to
16 this Paragraph.

17 **8. Product Characterization.** SIG acknowledges
18 that each of the Products listed in Exhibit A contains
19 trichloroethylene or nitromethane and Plaintiff alleges that
20 the customary use or application of the Products is likely to
21 expose users to trichloroethylene or nitromethane, substances
22 known to the State of California to cause cancer. In the
23 event that SIG obtains analytical, risk assessment or other
24 data ("Exposure Data") that shows an exposure to any or all
25 Products poses "no significant risk" as defined under Health &
26 Safety Code §25249.10(c) and SIG seeks to eliminate the
27 warnings, then SIG shall provide DiPirro with ninety (90) days

28 CONSENT JUDGMENT

1 prior written notice of its intent to limit or eliminate the
2 warning provisions under this Agreement based on the Exposure
3 Data and shall provide DiPirro with all such supporting
4 Exposure Data. Within ninety (90) days of receipt of SIG's
5 Exposure Data, DiPirro shall provide SIG with written notice
6 of his intent to challenge the Exposure Data (in the event
7 that he chooses to make such a challenge). If DiPirro fails
8 to provide SIG written notice of his intent to challenge the
9 Exposure Data within ninety (90) days of receipt of SIG's
10 notice and the Exposure Data, DiPirro shall waive all rights
11 to challenge the Exposure Data, and SIG shall be entitled to
12 limit or eliminate the warning provisions required under this
13 Agreement with respect to those Product(s) to which the
14 Exposure Data applies. If DiPirro timely notifies SIG of his
15 intent to challenge the Exposure Data, DiPirro and SIG (a) may
16 stop its efforts to eliminate the warnings upon notice to
17 DiPirro with no further liability or obligations or (b) shall
18 negotiate in good faith for a period not to exceed thirty (30)
19 days following receipt of SIG's notice to attempt to reach a
20 settlement of this issue. If a settlement is not reached,
21 DiPirro and SIG agree to submit such challenge to the superior
22 court for determination, pursuant to the court's continuing
23 jurisdiction of this matter under C.C.P. §664.6 and this
24 Agreement. The prevailing party shall be entitled to
25 reasonable attorneys' fees and costs associated with bringing
26 a motion brought under this paragraph to the court for
27 determination.

28 CONSENT JUDGMENT

1 **9. Severability.** In the event that any of the
2 provisions of this Agreement are held by a court to be
3 unenforceable, the validity of the enforceable provisions
4 shall not be adversely affected.

5 **10. Attorney's Fees.** In the event that a dispute
6 arises with respect to any provision(s) of this Agreement, the
7 prevailing party shall be entitled to recover costs and
8 reasonable attorneys' fees. .

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

11 **12. Notices.** All correspondence to Michael DiPirro
12 shall be mailed to:

13 David R. Bush or Jennifer Henry
14 Bush & Henry
15 4400 Keller Ave., Suite 200
 Oakland, CA 94605-4229
 (510) 577-0747

16 All correspondence to SIG shall be mailed to:

17 Jane B. McAllister, Esq.
18 Ahlers, Cooney, Dorweiler, Haynie, Smith &
 Albee
19 100 Court Avenue, Suite 600
 Des Moines, Iowa 50309
20 (515) 243-7611

21 **13. Compliance With Reporting Requirements.** The
22 parties agree to comply with the reporting form requirements
23 referenced in Health & Safety Code §25249.7(f). As of the
24 Effective Date, the California Attorney General's reporting
25 forms are not available. DiPirro represents, however, that his
26 counsel will send a copy of this Agreement to the California
27 Attorney General's Office prior to or concurrently with the

28
CONSENT JUDGMENT

1 presentation of the Consent Judgment to the Alameda County
2 Superior Court.

3 **14. Counterparts and Facsimile.** This Agreement may
4 be executed in counterparts and facsimile, each of which shall
5 be deemed an original, and all of which, when taken together,
6 shall constitute one and the same document.

7 **15. Authorization.** The undersigned are authorized
8 to execute this Agreement on behalf of their respective
9 parties and have read, understood and agree to all of the
10 terms and conditions of this Agreement.

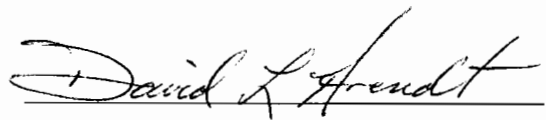
11
12
13 **AGREED TO:**

14
15 DATE: _____

16
17 _____
18 Michael DiPirro
19 PLAINTIFF

AGREED TO:

DATE: 3-29-01



SIG Manufacturing Company,
Inc.
DEFENDANT

20
21 **APPROVED AS TO FORM:**

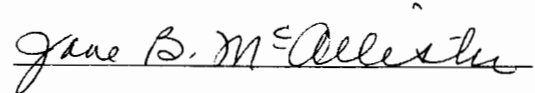
22
23 DATE: 3/30/01

24 

25 David Bush
26 Attorneys for Plaintiff
27 MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: 3-29-01



Jane B. McAllister
Attorneys for Defendant
SIG MANUFACTURING COMPANY,
INC.

28 CONSENT JUDGMENT

1 presentation of the Consent Judgment to the Alameda County
2 Superior Court.

3 **14. Counterparts and Facsimile.** This Agreement may
4 be executed in counterparts and facsimile, each of which shall
5 be deemed an original, and all of which, when taken together,
6 shall constitute one and the same document.

7 **15. Authorization.** The undersigned are authorized
8 to execute this Agreement on behalf of their respective
9 parties and have read, understood and agree to all of the
10 terms and conditions of this Agreement.

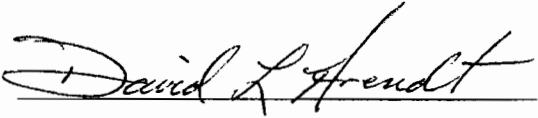
11
12
13 **AGREED TO:**

14
15 DATE: 4/2/01

16
17 
18 Michael DiPirro
19 PLAINTIFF

AGREED TO:

DATE: 3-29-01


SIG Manufacturing Company,
Inc.
DEFENDANT

20
21 **APPROVED AS TO FORM:**

22
23 DATE: 3/30/01

24
25 
26 David Bush
27 Attorneys for Plaintiff
28 MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: 3-29-01


Jane B. McAllister
Attorneys for Defendant
SIG MANUFACTURING COMPANY,
INC.

CONSENT JUDGMENT

Exhibit A

EXHIBIT A

1. Core Bond

2. SIG Champion Fuels

CONSENT JUDGMENT