

1 Clifford A. Chanler, State Bar No. 135534
2 Mark Todres, State Bar No. 168389
3 CHANLER & ASSOCIATES
4 1700 Montgomery Street, Suite 110
5 San Francisco, CA 94111
6 (415) 391-1122

7 Attorneys for Plaintiff
8 AS YOU SOW

FILED

JUN 16 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 COUNTY OF MARIN

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

13 Plaintiff,

14 v.

15 SURFACE PROTECTION INDUSTRIES,
16 INC., R.J. McGLENNON COMPANY,
INC., and DOES 1 through 1000,

17 Defendants,
18
19
20
21
22
23
24
25
26
27
28

No. 162032

STIPULATION FOR ENTRY OF
JUDGMENT AND JUDGMENT ON
STIPULATION

ENTERED

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

8
9 Dated: June 15, 1995
10

11 by: Mark Todres
12 Mark Todres
13 Attorneys for Plaintiff
14 AS YOU SOW

15 Dated: June 15, 1995
16

17 by: Barry P. Goode
18 Barry P. Goode
19 Attorneys for Defendant
20 SURFACE PROTECTION
21 INDUSTRIES, INC.

22 IT IS HEREBY ORDERED that judgment be entered in
23 accordance with the terms of the stipulation between the
24 parties.
25

26 Dated: June 16, 1995
27

28 [Signature]
Judge of the Superior Court

Exhibit A

SETTLEMENT AGREEMENT

On May 20, 1995, in San Francisco, California, **AS YOU SOW ("AYS")** and **SURFACE PROTECTION INDUSTRIES, INC. ("SPI")** 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

SPI is a California corporation that manufactures and distributes lines of Products, 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 thus became subject to warning requirements pursuant to Health & Safety Code § 25249.6 on January 1, 1992; and

On or after July 29, 1994, AYS served SPI with a document entitled "60-Day Notice" which provided SPI with notice that it was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that Products it sells in California may expose users to toluene; and

On February 17, 1995, AYS perfected service of a complaint against SPI in the case captioned *As You Sow v. Surface Protection Industries, et al.* (Marin Superior Court No. 162032) alleging that SPI Products were being sold without a Proposition 65 warning. As used in this Settlement Agreement the word "Products" has the same meaning as it was assigned in that complaint; SPI denies the allegations made in the 60 Day Notice and the complaint.

In order to avoid costly and time-consuming litigation, AYS, on its own behalf and on behalf of the public interest in accordance with Health and Safety Code § 25249.7(d) and SPI have agreed to settle all claims that have been brought or could have been brought against each other arising from the sale by SPI of Products without proper Proposition 65 warnings.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. SPI agrees that within thirty (30) days from its receipt of the conformed, file stamped copy of the stipulated judgment entered pursuant to paragraph 2 of this Agreement it shall send (i) the letter attached hereto as Exhibit A, to customers to whom, between January 1, 1992 and January 1, 1993, it sold the products referred to in that letter, together with (ii) at least 25 warning stickers at least 5 cm by 2 cm printed in black ink on a white background, and displaying the following statement:

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

2. The parties shall sign and AYS 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. Upon entry of the stipulated judgment, AYS shall promptly forward a conformed, file stamped copy of the stipulated judgment to SPI.

3. SPI agrees to pay \$4,000 to AYS within ten days of receipt of the conformed, file stamped copy of the stipulated judgment entered pursuant to paragraph 2 of this Agreement. The restitutionary component of this payment, which is made pursuant to Business & Professions Code § 17203, shall be paid to Unplug. Unplug is an Oakland-based organization that provides environmental education materials to schools. 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 SPI's attention, litigating and negotiating a settlement in the public interest.

4. Not later than the date on which its payment is due, pursuant to paragraph 3 above, SPI shall provide a declaration to AYS stating whether it receives, from those who supply toluene to it, a warning in the nature of that provided for by Proposition 65. That declaration shall also identify those suppliers.

5. Payment to AYS shall be made payable to "As You Sow" and sent by mail to AYS' counsel at the address below:

Mr. Clifford A. Chanler
Chanler & Associates
Suite 110
1700 Montgomery Street
San Francisco, CA 94111-1021

6. AYS, on behalf of itself and the public interest, and its members, employees and agents and its attorneys, their employees and agents, by this Agreement waive all rights to institute or prosecute any further action against SPI, its parent, subsidiaries or related corporations, and its and their directors and officers, and any distributors, wholesalers and/or retailers which sell or distribute SPI's Products, whether under Proposition 65, Business & Professions Code §§ 17200 *et seq.*, or any other statute or common law claim based on SPI's failure to warn consumers about exposure to toluene from any of the Products.

7. AYS, in consideration of the payments set forth herein, on behalf of itself and the public interest, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, does hereby release and forever discharge SPI (and all in SPI's chain of distribution, including but not limited to all distributors, wholesalers and retailers) and the successors, assigns, predecessors, stockholders, officers, directors, subrogees, subsidiaries, trustees, corporate parents, affiliates, board members, agents, attorneys, employees and consultants, of each of them of and from any and all claims, demands, actions, causes of action, duties, debts, sums of money, suits, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, obligations, liabilities and accounts of whatsoever kind, nature or description, direct or indirect, at law or in equity, in contract or tort or otherwise arising from or relating to any facts or legal theories involving toluene in the Products and Proposition 65; it being the specific intent and purpose of the parties hereto that this settlement agreement and release shall extend to any and all persons, corporations, associations, or other entities and to any and all of the matters aforesaid, whether now known or unknown, which exist or might be claimed to exist at, prior to, or after the date hereof relating to exposure to toluene in the Products; and AYS on behalf of itself and the public interest, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, and each of them, expressly waive, release and relinquish any and all claims or rights to assert that any such matter, cause or thing of any kind or nature whatsoever has been, through oversight or error or intentionally or unintentionally, omitted with respect to exposure to toluene in the Products.

8. SPI, in consideration of the commitments set forth herein, on its own behalf, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, does hereby release and forever discharge AYS, its successors, assigns, predecessors, stockholders, officers, directors, subrogees, subsidiaries, trustees, corporate parents, affiliates, board members, agents, attorneys, employees and consultants, of and from any and all claims, demands, actions, causes of action, duties, debts, sums of money, suits, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, obligations, liabilities and accounts of whatsoever kind, nature or description, direct or indirect, at law or in equity, in contract or tort or otherwise arising out of or relating, directly or indirectly, to the application of Proposition 65 to toluene in the Products, or arising from or relating to any facts or legal theories involving the application of Proposition 65 to the exposure to toluene in the Products; it being the specific intent and purpose of the parties hereto that this settlement agreement and release shall extend to any and all persons, corporation, associations, or other entities and to any all of the matters aforesaid, whether now known or unknown, which exist or might be claimed to exist at, prior to, or after the date hereof; and SPI, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, and each of them, expressly waive, release and relinquish any and all claims or rights to assert that any such matter, cause or thing of any kind or nature whatsoever has been, through oversight or error or intentionally or unintentionally, omitted with respect to the application of Proposition 65 to the exposure to toluene in the Products.

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. 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
Suite 110
1700 Montgomery Street
San Francisco, CA 94111

All correspondence to SPI shall be mailed to :

Barry P. Goode, Esq.
McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center
San Francisco, CA 94111

12. Nothing in this Agreement shall be construed as an admission by SPI 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 SPI of any fact, finding, conclusion, issue of law or violation of law and it is understood and agreed that this Agreement is a compromise of disputed claims. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of SPI under this Agreement.

13. Each party hereby acknowledges that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matters of this Agreement, but that it is its intention fully, finally and forever to settle any and all disputes and differences, asserted or unasserted, known and unknown, suspected and unsuspected, which now exist, may exist, or have existed, with respect to the matters settled pursuant to this Agreement. In light of the foregoing and in view of the fact that each party has been advised by its counsel relating to the provisions of Section 1542 of the Civil Code of the State of California, each party specifically waives, to the extent permitted by law, the provisions and the benefits of the provisions of said Section 1542 as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

14. This is an integrated Agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of AYS and SPI relating to the subject matter of the Agreement, are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by AYS or SPI concerning the subject matter herein. All prior and contemporaneous drafts, negotiations, representations, covenants, warranties and conversations concerning the subject matter of this Agreement other than those stated herein are merged into this Agreement and shall not be used to interpret the language and/or meaning of this Agreement.

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

AGREED TO:

AS YOU SOW

By: _____

Dated: _____

AGREED TO:

SPI

By: _____

Its: _____

April __, 1995

To SPI Customers
Address

Proposition 65 Labels

Dear Customer:

It has come to our attention that you may still have on your shelves some old cans of Zolotone products with labels which do not contain a Proposition 65 warning. This is to alert you to that possibility and to provide supplemental labels you should use to remedy that.

As you may know, California's Proposition 65 requires companies to provide a warning on a product sold by them if the use of that product will expose a customer to a chemical on the State's Proposition 65 list. Zolotone contains toluene, which is on that list.

Surface Protection has included a Proposition 65 warning on Zolotone labels for more than two years now. But there may still be some old cans without that warning. So we have prepared the enclosed, pressure-sensitive labels. We ask that you check your stock and apply these to any can which does not have the Proposition 65 warning on it. The sticker should be affixed in a conspicuous location.

Failure to provide a Proposition 65 warning may subject you to legal action by various environmental groups or the California Attorney General. Civil penalties can be up to \$2500 per day per violation. Thus, it is important that you comply with this request.

If you have any questions or concerns about this matter or if you need additional stickers, please do not hesitate to contact _____ at 800/_____, or by mail at the above address.

Very truly yours,

EXHIBIT A